THE TRYAL, AND Condemnation OF Capt. Thomas Vaughan. FOR High Treason,

In Adhering to the

FRENCH-KING,

And for Endeavouring the Destruction of

His Majesty's Ships in the *NORE*.

Who upon full Evidence was found Guilty at the Sessions-House in the *Old-Baily*, on the 6*th*. of *Novemb*. 1696.

With all the Learned Arguments of the King's and Prisoners Council, both of the Civil and Common Law, upon the New Act of Parliament for *Regulating Tryals in Cases of High Treason*.

Perused by Sir *Charles Hedges*, Judge of the High Court of Admiralty; the Lord Chief Justice *Holt*, the Lord Chief Justice *Treby*, and the Council Present at the TRYAL.

To which is Added,

Captain *Vaughan*'s **Commission** at Large, which he had from the *French*-King.

As also an Account of the TRYAL of *John Murphey* for HIGH TREASON.

LONDON,
Printed for *John Everingham* at the *Star* near the West-end of St. *Paul*'s. 1697.

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Die Sabbati, tricesimo primo Octobris, Annoque Regni Regis Willielmi Octavo, Annoque Domini. 1696.

The Court being sate, at which were present, Sir Charles Hedges, *Judge of the High Court of Admiralty, the Lord Chief Justice* Holt, *the Lord Chief Justice* Treby, *the Lord Chief Baron* Ward, *Mr. Justice* Turton, *and others of his Majesties Commissioners. The Court proceeded on this manner.*

Cl. of Arr. MAKE Proclamation.

Cryer. O Yes, O yes, O yes. *All manner of Persons that have any thing more to do,* &c. *and were Adjourn'd to this Hour, draw near, and give your Attendance.* God save the King.

Then the Grand Jury were call'd over, and the Appearances mark'd. And Witnesses being Sworn in Court to give Evidence to them, against *Thomas Vaughan*, they withdrew to hear the same.

Then the Keeper of *Newgate* was ordered to bring his Prisoner *Thomas Vaughan* to the Bar. Which he did.

Cl. of Arr. Tho. Vaughan, hold up thy Hand. (Which he did.) Thou standest Indicted, *&c.*

How sayest thou, *Tho. Vaughan*, Art thou Guilty of the High Treason whereof thou standest Indicted, or Not Guilty?

T. Vaughan. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be Try'd?

T. Vaughan. By God, and this Country.

Cl. of Arr. God send thee a good Deliverance.

And then the Court proceeded to the Tryal of the *Pyrates*, and gave notice to Mr. *Vaughan* to prepare for his Tryal on *Friday* next, the *6th* of *November*, 1696.

Die Veneris, ſexto Novembris, Annoque Regni Regis Willielmi Octavo, Annoque Domini, 1696.

Cl. of Arr. CRIER, make Proclamation.

Cryer. O yes, O yes, O yes. *All manner of Perſons that have any thing more to do at this Seſſions of* Oyer *and* Terminer, *Adjourn'd over to this Day, draw near and give your Attendance. And you Sheriffs of the City of* London, *return the Precepts to you directed, upon Pain and Peril which will fall thereupon.*

Then the Under Sheriff return'd the Precepts.

Cl. of Arr. Make Proclamation.

Cryer. O yes. *You good Men of the City of* London, *Summon'd to appear here this Day, to try between our Sovereign Lord the King and the Priſoner at the Bar, Anſwer to your Names, as you ſhall be called, every one at the firſt Call, and ſave your Iſſues.*

The whole Pannel was call'd over, and the Appearances of thoſe that anſwered, Recorded, and the Defaulters were again call'd over.

Mr. *Phipps.* Will your Lordſhip pleaſe to order, that two Men may be brought from the *Marſhalſea*, in behalf of the Priſoner?

L. C. J. Holt. You ſhall have an Order.

Then the Court went on the Tryal of the Six *Pyrates*, and after the Tryal was over, *Tho. Vaughan* was call'd to the Barr.

T. Vaughan. My Lord, my Irons are very uneaſie to me, I deſire they may be taken off.

L. C. J. Holt. Ay, ay, take them off.

Mr. Phipps. If your Lordſhip pleaſe, we have ſome doubts as to the Indictment.

L. C. J. Holt. If you have any Exceptions, you ought to have made them before the Priſoner pleaded to it.

Mr. Phipps. I thought you had allow'd it, my Lord, in former Caſes.

L. C. J. Holt. No, we did not allow it as of Right due to the Priſoner; the Exceptions ſhould have been made before the Plea. You were indulg'd in being heard at firſt in the Caſes of *Rookwood*, *Cranburne*, and *Lowick*, but it was not the intent of the Act, to alter the Method of the Proceeding; and ſo upon conſideration hath it been determin'd. The Priſoner hath time given by the Act to make any exception to the Indictment before he pleaded, but you may move what you will afterwards in Arreſt of Judgment, if it be material.

Cl. of Arr. Thomas Vaughan, Thoſe Men that you ſhall hear called, and Perſonally appear, are to paſs between our Sovereign Lord

Lord the King and you, upon Tryal of your Life and Death; if therefore you will Challenge them, or any of them, your time is to ſpeak unto them as they come to the Book to be Sworn, before they be Sworn.

Mr. Phipps. There was one Man here that deſir'd to be excus'd, becauſe he was on the Grand Jury; therefore it ſeems there are ſome return'd upon this Jury that were on the Grand Jury, which I think ought not to be.

L. C. J. Holt. Challenge them then.

Mr. Phipps. We do not know the Men.

Then the Pannel was call'd over, and a great many Challenges made, and the Twelve Men that were Sworn, were theſe.

Ed. Leeds.	*Caleb Hook.*
Nath. Green.	*Joceline Roberts.*
Hen. Sherbrook.	*Tho. Parker.*
Jo. Sherbrook.	*Peter Gray.*
Tho. Emms.	*Roger Poſton.*
Peter Parker.	——*Woolley.*

Cl. of Arr. Cryer, make Proclamation.

Cryer. O Yes, *If any one can inform my Lords, the King's Juſtices, the King's Serjeant, the King's Attorney General, the King's Advocate, in his High Court of Admiralty, before this Inqueſt be taken of the High Treaſon, whereof* Thomas Vaughan, *the Priſoner at the Barr, ſtands Indicted, let them come forth, and they ſhall be heard, for now the Priſoner at the Bar ſtands upon his Deliverance; and all others that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth and give their Evidence, or elſe they forfeit their Recognizance.*

Cl. of Arr. Tho. Vaughan, hold up thy Hand. (Which he did.) You that are Sworn, look upon the Priſoner, and hearken to his Cauſe. He ſtands Indicted by the Name of *Thomas Vaughan.*

Whereas, *That before and until the 8th. day of July in the 7th. Year of the Reign of our Sovereign Lord King* William *the Third, there was open War between our ſaid Lord the King, and* Lewis *the* French *King. And that the ſaid War continued on the ſaid 8th Day of* July, *in the 7th. Year aforeſaid, and doth ſtill continue. And that for all the time aforeſaid, the ſaid* Lewis *the* French *King and his Subjects, were, and at preſent are Enemies of our ſaid Lord the King that now is: And that at the time of the ſaid War, and before the ſaid 8th day of* July *in the 7th Year aforeſaid, the ſaid* Lewis *the* French *King, ſet out, amongſt others, a certain ſmall Ship of Warr called the* Loyal Clencarty, *of which* Thomas Vaughan, *a Subject of our ſaid Lord the King that now is, was Commander, with ſeveral* French *Subjects, Enemies of our ſaid Lord the King, to the Number of* 15 *Perſons, in a Warlike manner to take and deſtroy the Ships, Goods, and Moneys of our ſaid Lord the King, and his Subjects, and againſt our ſaid Lord the King to wage War upon*

the High-Seas, within the Juriſdiction of the Admiralty of England. *And that at the time of the ſaid War between our ſaid Lord the King and the aforeſaid* Lewis *the* French *King*, Tho. Vaughan, *late of* Galloway, *in the Kingdom of* Ireland, *Marriner, being a Subject of our ſaid now Lord the King, as a falſe Rebel againſt the ſaid King, his Supreme Lord, and not having the fear of God before his Eyes, nor conſidering the Duty of his Allegiance, but being moved and ſeduced by the inſtigation of the Devil, and altogether withdrawing the cordial Love, and true and due Obedience which every true and faithful Subject of our ſaid* Lord *the King, ought, by* Law, *to have towards the ſaid King; and the ſaid War, as much as in him lay, againſt our ſaid* Lord *the King, deſigning and intending to proſecute and aſſiſt. The ſaid* Tho. Vaughan *on the ſaid* 8th *day of* July *in the ſaid* 7th *Year of the King, being a Souldier aboard the ſaid Ship of Warr called the* Loyal Clencarty, *in the Service of the ſaid* Lewis *the* French *King, And being then on the High-Seas, within the Juriſdiction of the Admiralty of* England, *about Fourteen* Leagues *from* Deal, *did then and there by force and Arms, falſly, maliciouſly, wickedly, and Traiterouſly, aid, help, and aſſiſt the Enemies of our ſaid* Lord *the King, in the Ship of War called the* Loyal Clencarty. *And afterwards the ſaid* Thomas Vaughan, *in the Execution and Performance of his ſaid aiding helping and aſſiſting, Maliciouſly Falſely and Traiterouſly ſailed a Cruiſing to ſeveral Maratime Places within the Juriſdiction aforeſaid, by Force and Arms to take the Ships, Goods, and Money of our ſaid Lord the King, and his Subjects, againſt the Duty of his Allegiance, the Peace of our ſaid* Lord *the King, and alſo againſt a Statute in that Caſe made and Provided.*

And the ſaid Jurors *for our ſaid* Lord *the King, upon their ſaid* Oaths, *farther repreſent, That the aforeſaid* Thomas Vaughan, *as a falſe Traytor againſt our ſaid* Lord *the King, further deſinging practiſing, and with his whole ſtrength, intending the common Peace and Tranquility of this Kingdom of* England *to diſturb. And War and Rebellion againſt the ſaid King upon the High-Seas within the Juriſdiction of the Admiralty of* England, *to move, ſtir up, and procure. And the ſaid Lord the King, from the Title, Honour, Royal Name, and Imperial Crown of his Kingdom of* England, *and Dominions upon the High-Seas, to depoſe and deprive, and miſerable ſlaughter of the Subjects of the ſaid Lord the King, of this Kingdom of* England, *upon the High-Seas, and within the Juriſdiction aforeſaid, to cauſe and procure, on the ſaid* 8th *day of* July, *in the ſaid* 7th *Year of the King, upon the High-Seas, about Fourteen Leagues from* Deal, *and within the Dominion of the Crown of* England, *and within the Juriſdiction of the Admiralty of* England *aforeſaid, falſly, maliciouſly, deviliſhly, and treacherouſly by force and Arms, with divers others falſe Rebels and Traytors, (to the* Jurors *unknown) War againſt our ſaid now Lord the King, prepared, promoted, levyed, and waged. And that the ſaid* Thomas Vaughan *in performance of his ſaid War and Rebellion, then and there by Force and Arms, maliciouſly, wickedly, and openly aſſembled and joined himſelf with ſeveral other falſe Traytors and Rebels (to the* Jurors *unknown) to the Number of Fifteen Perſons, being Armed and Provided in a Warlike manner,*

with

with Guns and other Arms, as well offenſive as defenſive. And the ſaid Thomas Vaughan, *then and there being aboard the ſaid Ship of War, called the* Loyal Clencarty, *aſſembled with the other falſe Rebels and Traytors as aforeſaid, maliciouſly, wickedly and Traytorouſly ſailed a* Cruiſing *to ſeveral Maritime places, with the aforeſaid Ship of Warr, called the* Loyal Clencarty, *with an intent to take, ſpoil, and carry away the Ships, Goods, and Money, of our ſaid Lord the King, and his Subjects, by Force and Arms, upon the High and open Seas, within the juriſdiction aforeſaid, againſt the Duty of his Allegiance, the Peace of our ſaid Lord the King, his Crown and Dignities; and likewiſe againſt the Form of a Statute in this Caſe made and provided.*

Thomas Noden, } Jurors.
Samuel Oldham, }

Upon this Indictment he hath been Arraign'd, and upon his Arraignment he hath pleaded Not Guilty, and for his Tryal he hath put himſelf upon God and his Country, which Country you are. Your Charge is to enquire whether he be guilty of the High Treaſon whereof he ſtands Indicted, or not Guilty. If you find him Guilty, you are to enquire what Goods or Chattels, Lands or Tenements he had at the time of the High Treaſon committed, or at any time ſince. If you find him not Guilty, you are to enquire whether he fled for it. If you find that he fled for it, you are to enquire of his Goods and Chattels as if you had found him Guilty. If you find him not Guilty, nor that he did fly for it, you are to ſay ſo, and no more, and hear your Evidence.

Mr. Whitaker. May it pleaſe you, my Lord, and you Gentlemen of the Jury, The Priſoner at the Barr, *Thomas Vaughan*, ſtands Indicted for High Treaſon, That whereas on the 9*th* of *July*, there was a War between his Majeſty the King of *England*, and *Lewis* the *French* King; amongſt other War-like Preparations, that the *French* King did make, he did ſet forth a Ship called the *Loyal Clencarty*; That the Priſoner at the Bar, as a falſe Traytor, did liſt himſelf aboard this Ship; And on the High-Seas, about Eleven Leagues from *Deal*, did Trayterouſly aid the Kings Enemies, to take the King's Ships. This is ſaid to be againſt the Duty of his Allegiance, and the Peace of our Soveraign Lord the King, his Crown and Dignity. He ſtands further Indicted, for that he, the ſaid *Thomas Vaughan*, with ſeveral other falſe Traytors, did levy War, and Arm themſelves with Arms, Offenſive and Defenſive, and was Cruiſing on the High-Seas, off of *Deal*, with an intent to take the King's Ships, and to kill and deſtroy the King's Subjects, againſt the Duty of his Allegiance, and the Peace of our Soveraign Lord the King, his Crown and Dignity. To this Indictment he has pleaded not Guilty. We ſhall call our Witneſſes, and prove the Fact, and doubt not but you will do your Duty.

Dr. Littleton. Gentlemen, of the Jury, you have heard the Indictment opened, and alſo what ſort of Crime the Priſoner at the Bar ſtands charged with, *viz.* That he being a Subject of the Crown of *England*, has, together with his Accomplices, armed himſelf in a Military way, to Murther and Deſtroy his fellow-Subjects, and as much as in him lay, to Ruin his Native Country, by ruining the Trade and Traffick, which is the great ſupport and Riches of the Nation. And that his Crime might be Conſummate, He, with his Accomplices, has done what in him lay, to Dethrone, and diſpoſſeſs his Sacred Majeſty, as well knowing it was in vain to expect to make the Nation unhappy, as long as we enjoy ſo Great and Good a Prince. So that you are to look on the Priſoner as an Enemy and Traytor to his own Country; and not only ſo, but as one of the worſt and moſt dangerous Enemies: Since he being a Subject of theſe Iſlands, was the better able to ſpy out our Weakneſſes and Defects, and thereby to do us the greater Miſchief. It is not to be expreſt, what Ruin and Deſolation it would have cauſed to this Nation, had this Man and his Accomplices brought their wicked Intentions to effect; and all this was done to Aid and Aſſiſt the Grand Enemy of Chriſtendom; and of our own Country in particular, the *French* King. Therefore as you are lovers of your King and Country, and your Fellow-Subjects, whom the Priſoner and his Accomplices would have deſtroy'd; I am ſure you will take care to do the Nation Juſtice, and that he be brought to condign puniſhment. Gentlemen, there is one thing further that I muſt not omit, *viz.* That the Priſoner at the Bar being in Cuſtody for theſe very Crimes about a Twelve-month ſince, did not think fit to truſt to his Innocency, nor to his pretended *French* Extraction, but the day before he was to be Try'd, he thought fit to break Priſon, withdraw from Juſtice, and run his Country: Which tho' not a Confeſſion and full Proof, yet is a great Evidence of his Guilt.

Mr. Sol. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, the Priſoner at the Bar, *Thomas Vaughan*, ſtands Indicted for two ſorts of Treaſon. The one is for Levying War againſt the King, the other is for Aiding and Abetting the King's Enemies. And to prove the firſt, the levying of War, we ſhall prove that he was a Captain of a *French* Ship, call'd the *Granado* of St. *Maloes*, and that with that Ship, he took and carried away many of his Majeſty's Subjects, and took ſeveral Merchant Ships, and carried them to *France*. We ſhall likewiſe prove that he was Captain of another *French* Ship, call'd the *Loyal Clancarty*, with which he was Cruiſing off *Deal*, where we had ſeveral Ships lying at the ſame time: And there he being on Board the ſaid Ship *Clancarty*, was taken Priſoner, with a Commiſſion, by which he was Conſtituted Captain of the *Loyal Clancarty*, under the Hand of *Lewis* the *French* King.

And to prove him aiding and abetting to the King's Enemies, we ſhall prove againſt him this particular Fact; that he and his Accomplices did in the Year 1692, come to *London*, and went to *Tower-Wharf*, to enquire what Veſſels were ready to go down the River; and there was one laden with Piece-Goods, and he put himſelf, and ſeveral other of his Accomplices into this Veſſel, to go down the River; but they had contrived the matter, and brought it ſo to paſs, that they fell on thoſe Men who had the government of the Ship, and carried away this Veſſel to *France*. Now if this be true, the Priſoner is certainly guilty of aiding the King's Enemies: And to prove he was guilty of this, we will prove to you, that even in *France*, where he was at perfect Liberty, he owned he was the Contriver of all this, and that he had a thouſand pound for his ſhare of what was taken from our Merchants. If we prove theſe two Facts againſt him, I doubt not but you will find him guilty. We will call our Witneſſes.

Cl. of Ar. T. Eglington, Rich. Crouch, Sam. Oldham, John Bub, Noden. (Who appeared, and were Sworn.)

T. Vaughan. With ſubmiſſion to your Lordſhips, and the Honourable Bench, I beg that they may be put aſunder, out of hearing of one another.

L. C. J. Holt. Let it be ſo, though you cannot inſiſt upon it as your Right, but only a Favour that we may grant.

Mr. *Cowper.* Set up *Richard Crouch.* Is your Name *Richard Crouch?*

R. Crouch. Yes, Sir.

Mr. *Cowper.* Give my Lord and the Jury an account of what you know of the Ship *Coventry* taking of the *Clancarty*, and what you know concerning the Priſoner at the Bar in the taking of her.

R. Crouch. We weigh'd our Anchor about four a Clock.

Mr. *Cowper.* Where were you?

R. Crouch. At the *Nore*.

Mr. *Cowper.* In what Ship?

R. Crouch. The *Coventry*. After we had been under Sail a matter of an hour, we came to an Anchor with a little wind; ſo, Sir, this *Thomas Vaughan* met with a couple of Pinks, they were ſmall Veſſels that he deſign'd to take; but he ſaw us and ſo lay by all Night.

Mr. *Cowper.* Who lay by?

R. Crouch. Thomas Vaughan, the Priſoner at the Bar.

Mr. *Cowper.* In what Veſſel was he?

R. Crouch. In a two-and-twenty-Oar-Barge, he lay by at the *Gunfleet*; the next Morning we weigh'd Anchor, at day-light; we ſaw him, and chac'd after him; and we made them, and he made us, and we made what haſte we could, and coming up we fir'd a Gun at him, and then we fir'd another, and then he went aſhore.

Mr. *Cowper.* What, do you mean that he run his Veſſel on the Sands?

R. Crouch. Yes, and then we fired another Gun at him, and then he got off again; and then we fired another Gun, and could not bring him to, and then he got off the Sands again, and when we came up to him, we Mann'd our Long-Boat, and Pinnace and Barge, and had him at laſt. When he came on Board, he ſaid I

cannot deny but I am an *Irish-Man*, and that my Design was to burn the Ships at the *Nore*.

Mr. *Cowper*. Did he himself confess it?

R. Crouch. Yes he did, that is the Man, I know him well enough.

L. C. J. Holt. You took him, in what Ship was you?

R. Crouch. In the *Coventry*.

L. C. J. Holt. Out of what Ship was he taken?

R. Crouch. The two-and-twenty-Oar-Barge.

L. C. J. Holt. What Ship did it belong to?

R. Crouch. I reckon it was my Lord *Barclay*'s Barge.

L. C. J. Holt. Who did it belong to then?

R. Crouch. To the King of *France*.

L. C. J. Holt. What Company was there in her, how many Men had she aboard?

R. Crouch. About five and twenty hands.

Mr. *Cowper*. Did you ever hear him say any thing of a Commission he had?

R. Crouch. I heard he had a *French* Commission, but I did not see it.

Mr. *Cowper*. Did you hear him say any thing of it?

R. Crouch. No.

Mr. *Cowper*. But he told you his Design was to burn the Ships at the *Nore*?

R. Crouch. Yes.

Mr. *Cowper*. What Ships?

R. Crouch. The *English* Ships; there were several Ships there then.

L. C. J. Holt. Were there no *Frenchmen* aboard the Barge?

R. Crouch. No, that I can tell.

Mr. *Lechmere*. From whence did he come, from *England*, or *France*?

R. Crouch. From *Calice* in *France*.

L. C. J. Holt. Prithee hear me, this two-and-twenty-Oar-Barge, did it belong to any other Ship?

R. Crouch. No, not that I can tell.

L. C. J. Holt. Did he call that Vessel the *Loyal Clancarty*?

R. Crouch. Yes, my Lord.

Then Edmund Courtney *was call'd*.

Mr. *Sol. Gen*. Mr. *Courtney*, pray tell my Lord and the Jury what you know of the going away of a *Custom-House* Boat?

Ed. Courtney. I will tell you, if you please.

Mr. *Phipps*. My Lord, I think they ought not to examine to that, because it is not laid in the Indictment. The carrying away of the *Custom-House* Barge is not mentioned in the Indictment, and by the New Act for Regulating Tryals in Cases of Treason, no Evidence is to be admitted or given of any Overt-Act, that is not expresly laid in the Indictment.

L. C. J. Holt. Nothing else? Suppose a Man be Indicted for Levying War against the King, or Adhering to the King's Enemies, can't they prove any Act that makes out a Levying of War, or an Adherence to the King's Enemy?

Mr. *Phipps*. With submission, not by that Act, my Lord, unless it be laid in the Indictment.

L. C. J. Holt.

L. C. J. Holt. Levying of War is the Treaſon; may they not prove that Levying of War, without being confin'd to any ſpecial or particular Act?

Mr. *Phipps.* With ſubmiſſion, by the 25 of *Edw.* the 3*d.* Levying of War, as well as Imagining the Death of the King, muſt have the Overt Acts, that are to prove it, expreſt in the Indictment.

L. C. J. Holt. Levying of War is an Overt-Act.

Mr. *Sol. Gen.* The buſineſs of Overt-Acts is, where the Compaſſing and Imagining the King's Death is the Crime and Queſtion, and this muſt be diſcover'd by Overt-Acts. But if the Treaſon be falſifying of the King's Money, this is Treaſon, but there can be no Overt-Act of that, for that is an Overt-Act it ſelf; but there muſt be an Overt-Act to prove the Compaſſing and Imagining the Death of the King, and in no other ſort of Treaſon.

L. C. J. Holt. Levying of War that is an Overt-Act, ſo is Adhering to the King's Enemies. Now Compaſſing and Imagining the Death of the King is not an Overt-Act in it ſelf, but is a ſecret imagination in the Mind, and a purpoſe in the Heart; but there muſt be external Acts to diſcover that imagination and purpoſe.

Mr. *Phipps.* What is the meaning of the New Act then, that there ſhall be no Evidence of any Overt-Act, but what is laid in the Indictment?

L. C. J. Holt. What Overt-Acts are there in Clipping and Coyning?

Mr. *Phipps.* That is not within the New Act of Parliament.

L. C. J. Holt. That is moſt true, the one is excepted, the other is not comprehended; but the Queſtion is upon the Statute of 25. *Edw.* 3*d.* to which the late Act doth referr. Now proving the adherence to the King's Enemy, is proving an Overt-Act. Suppoſe it be the killing of the Chancellor, or Treaſurer, or Judge in the Execution of his Office, what Overt-Acts will you have then? Adhering to the King's Enemies, is a Treaſon that conſiſts in doing an Overt-Act.

Mr. *Phipps.* Yes, my Lord, I take it that it is for the New Act, by ſaying *that no Evidence ſhall be admitted of any Overt-Act, that is not expreſly laid in the Indictment*, muſt be intended of ſuch Treaſons, of which by Law Overt-Acts ought to be laid. Now the killing the Chancellor, or Treaſurer, or Judge in the Execution of his Office, are not ſuch Treaſons of which it was neceſſary to lay any Overt-Acts in the Indictment, and ſo not within the meaning of this New Law. But Levying War, and Adhering to the King's Enemies, which are the Treaſons in this Indictment muſt by the expreſs purview of the 25*th* of *Edw.* 3. be proved by Overt-Acts, which are to be alledged in the Indictment.

Mr. *Sol. Gen.* The New Act does not alter the Law in this particular, what was Law before, is Law now, it leaves the Overt-Acts as they were before; and it ſays not that an Overt-Act need to be expreſt, where it was not needful before. Now if a Man be Indicted for Compaſſing the Death of a private Perſon, there ought to be ſome Overt-Act to prove his Deſign; but if there be an Indictment for Murther, there needs no other Overt-Act to prove it, but the Murther it ſelf.

L. C. J. Holt.

L. C. J. Holt. But the force of the Objection lies in this, *viz.* To ſay a Man Levyed War, or Adhered to the King's Enemies, is no good Indictment; but it is neceſſary to alledge in what manner he Levyed VVar, or Adhered to the King's Enemies; as that he appear'd in ſuch a war-like manner, or did adhere to and aſſiſt the King's Enemies, by joyning Forces with them, or otherwiſe aſſiſting them, or Confederating with them, that muſt be ſpecified. But if you Indict a Man generally for adhering to the King's Enemies, and not ſay how and in what manner he did adhere to them, that is not a good Indictment; therefore if you particularize what Enemies, and how and in what manner he adher'd to them, no Evidence can be given of any other kind of adherence, but that which is ſo ſpecified in the Indictment.

Mr. *Sol. Gen.* Then we muſt put all our Evidence into the Indictment.

Mr. *Phipps.* So you muſt, as to the Overt-Acts.

Mr. *Sol. Gen.* That will be the ſame thing as to put in all our Evidence, if we muſt give Evidence of no Overt-Act but what is expreſt in the Indictment. But I do not take it, that the Act requires all Overt-Acts to be put in the Indictment.

Mr. *Phipps.* The Act ſays ſo. Suppoſe you had left out the Overt-Act, would the Indictment have been good?

Mr. *Sol. Gen.* We did not intend to put in all the Over-Acts, but only what related to that part of the Treaſon.

Mr. *Phipps.* The Treaſon muſt be proved by Overt-Acts, and the Overt-Acts that prove the Treaſon, muſt be mention'd in the Indictment.

Mr. *Sol. Gen.* What the Overt-Acts of the Treaſons before-mentioned, as Counterfeiting the King's Money, and the like, are all to be mentioned?

L. C. J. Holt. Conſider, if you can make that a good Indictment, to ſay, that the Priſoner adhered to the King's Enemies, without mentioning any Overt-Acts to manifeſt ſuch an adherence, then your Anſwer to Mr. *Phipps* is full; but if it be not a good Indictment, without alledging particular Acts of adherence, then it neceſſarily follows, that if Particulars are alledged, and you do not prove them as is alledged, you have failed in the Indictment, and ſo his Objection will lie hard upon you.

Mr. *Sol. Gen.* My Lord, we framed our Indictment according to the Letter of the Statute.

L. C. J. Holt. In compaſſing the death of the King, you muſt ſhew how that is manifeſted by the Overt-Acts.

Mr. *Sol. Gen.* But compaſſing and imagining muſt be diſcovered by ſome Overt-acts.

L. C. J. Treby. This is a doubt I have often thought of, I thought it moſt natural that the Word *Overt-act* ſhould relate to the firſt Article, *viz. compaſſing and imagining of the King's Death*: For *Overt-act* ſeems to be oppoſed to ſomething of a contrary Nature: *Act* is oppoſed properly to *Thought*, *Overt* is properly oppoſed to *ſecret*. And that ſort of Treaſon conſiſting in ſecret Thought and internal Purpoſe, cannot be known, tryed, and judged of, without being Diſcloſed and manifeſted by ſome external open act. VVherefore it

is

is pertinent and Reasonable, in order to Attaint a Man of *such* Treason, that the Indictment should Charge and set forth the *Act*, as well as the *Thought*. And so it hath been used to be done.

But, such Order or manner doth not seem so natural or necessary, in framing Indictments for other Treasons, where the Treason consists in visible or discernible Facts; as levying War, &c.

Nevertheless I think an Overt-Act ought to be alledged in an Indictment of Treason for adhering to the King's Enemies, giving them Aid and Comfort. And the Overt-Act, or Acts, in this Case, ought to be the particular actions, means, or manner by which the Aid and Comfort was given.

My Lord *Cook* declares his Opinion to this purpose. His words which I read out of his Book here) are these. *The Composition and Connection of the words are to be observ'd*, viz. [thereof be Attainted by Overt Deed] *This*, says he, *Relates to the several and distinct Treasons*, before express'd, *and especially to the compassing and imagination of the Death of the King*, &c. *for that it is secret in the heart*, &c. Now the Articles of Treason, *before exprest* in the Statute of 25. *E.* 3. are four. 1. Compassing, &c. 2. Violating the Queen, &c. 3. Levying War, and 4. This of Adhering, &c. (And yet it is hardly possible to set forth any Overt Act concerning the 2*d.* otherwise than in the words of the Statute: That Article expressing so particular a Fact.)

I do observe also, that these words [*Being thereof Attainted by Overt Fact*] do, in this Statute, immediately follow this Article of *Adhering*, &c. And it would be a great Violence to Construe them to refer to the *first* Article only, and not to this *last*, to which they are thus connected. If they are to be Restrained to a *single* Article, it were more agreeable to the strict Rules of Construing, to refer them to this of *Adhering* only.

L. *C.* J. *Holt*. That which I insist on is this, whether the Indictment would be good, without expressing the special Overt-Act. If it be, then this is a surplusage, and we are not confin'd to it; but if it be not a good Indictment without expressing it, then we are confin'd to it.

Mr. Phipps. I believe Mr. Sollicitor never saw an Indictment, of this kind, without an Overt-Act laid in it.

L. *C.* J. *Holt*. Can you prove the Facts laid in the Indictment? for certainly the Indictment without mentioning particular Acts of adherance, would not be good.

Mr. Cowper. Yes, my Lord; and as to the Evidence before you, we would only offer this; whether in this Case, if the Indictment were laid generally, for adhering to the King's Enemies in one place, and in another place levying of War, and nothing more particular, it would be good; I doubt it would not. But when there is laid a particular Act of Adhering, we may give in Evidence matter to strengthen the direct proof of that particular Act of Adhering to the King's Enemies, tho' that matter be not specially laid in the Indictment: For the Act goes only to this, That the Prisoner shall not be Convicted, unless you prove against him the Over-Acts specially laid in the Indictment; But whether it shall not be heard, to make the other Overt-Act which is laid, the more probable. Now we have laid a special Overt-Act in the Indictment; and we have produced Evidence of it, and we would produce likewise collateral Evidence, to induce a firmer Belief of that

ſpecial Overt-Act, by ſhewing you that he hath made it his practice, during the War, to aid and aſſiſt the King's Enemies; But if the Jury do not find him Guilty of the ſpecial Overt-Acts laid in the Indictment, they cannot find him Guilty by the proof of any other Overt-Act not laid in the Indictment. But if we prove he has made this his practice, in other inſtances, during the War, whether that proof ſhall not be received?

Mr. Phipps. My Lord, I deſire the Act may be read. It expreſly contradicts what Mr. *Cowper* ſays, for it ſays, That no Evidence ſhall be given of any Overt-Act, that is not expreſly laid in the Indictment. (*The Act was Read.*)

L. C. J. Holt. That is, you may give Evidence of an Overt-Act, that is not in the Indictment, if it conduce to prove one that is in it. As conſulting to kill the King, or raiſe a Rebellion, is laid in the Indictment, you may give in Evidence an acting in purſuance of a Conſult, that is an Evidence that they agreed to do it, tho' that doing of the thing is, of it ſelf, another Overt-Act, but it tends to prove the Act laid in the Indictment.

Mr. Phipps. The Overt-Act laid in this Indictment, is his Cruiſing in the *Clancarty*; and this Overt-Act you would prove, is no Evidence of that, nor relates to it, but it is a diſtinct Overt-Act of it ſelf.

L. C. J. Holt. You cannot give Evidence of a diſtinct Act, that has no relation to the Overt-Act mention'd in the Indictment, tho' it ſhould conduce to prove the ſame ſpecies of Treaſon.

Mr. Cowper. We would apply this proof to the Overt-Act laid in the Indictment.

L. C. J. Holt. Any thing that has a direct tendency to it, you may prove.

Mr. Cowper. We have laid the Overt-Act, that he did voluntarily put himſelf on Board this Veſſel of the *French* King, the *Loyal Clancarty*, and did go to Sea in her, and Cruiſe, with a deſign to take the Ships of the King of *England*, and his Subjects. Now part of the Overt-Act, is his Intention in the Act of Cruiſing, we do not charge him with taking one Ship, ſo that his Intention is a Member of the Overt-Act, and it muſt be proved, to make his Cruiſing Criminal, that he deſign'd to take the Ships of the King of *England*. Now we think it a proper proof of his Intention, to ſhew, that during this War, before and after the time of the Treaſon laid in the Indictment, he was a Cruiſer upon, and Taker of the King's Ships, and this fortifies the direct proof given of his Intention.

L. C. J. *Holt.* I cannot agree to that, becauſe you go not about to prove what he did in the Veſſel call'd the *Loyal Clancarty*; but that he had an intention to commit depredation on the King's Subjects: So he might, but in another Ship. Now, becauſe a Man has a deſign to commit depredation on the King's Subjects in one Ship, does that prove he had an intention to do it in another?

Mr. Phipps. He was Cruiſing in the *Clancarty*, that is the Overt-Act laid in the Indictment; and the Overt-Act you would produce, is his being in another Veſſel.

L. C. J. Holt. Go on, and ſhew what he did in the *Clancarty*. You the Priſoner, will you ask this Man any Queſtions?

Mr. Phipps. Crouch, you ſaid, that the Priſoner did ſay he could not deny but he was an *Iriſh* man; how came you to talk about it?

R. Crouch. He ſaid, I cannot deny but I am an *Iriſh* Man.

L. C. J. *Holt.* Did he ſay he was an *Iriſh* man? What were the words he uſed?

R. Crouch. He told the Lieutenant he was an *Iriſh* Man.

Mr. Phipps. What Diſcourſe was there? How came he to ſay that?

R. *Crouch.* I went by only, and heard the words ſpoken to the Lieutenant.

L. C. J. *Holt.* Did he ſpeak Engliſh?

R. *Crouch.* Yes, my Lord.

L. C. J. *Holt.* If he ſpoke *Engliſh*, that is ſome Evidence he is an *Engliſh* man, tho' the contrary may be proved by him.

T. Vaughan. That would no more prove me an *Engliſh*-man, than if an *Engliſh* man were in *France*, and could ſpeak *French*, would prove him a *French*-man, becauſe he could ſpeak *French*.

L. C. J. *Holt.* You ſhall he heard by and by to ſay what you will on your own behalf.

Mr. Phipps. Were there any *French* men on board the *Clancarty*?

R. *Crouch.* No, Sir.

Mr. Phipps. Mr. *Vaughan*, will you ask him any Queſtions your ſelf?

Mr. Cowper. Call *T. Noden.*

T. Vaughan. How did you know that there were no *French*-men a-board? Did I addreſs my ſelf to you, when I came aboard?

R. *Crouch.* No, Sir.

T. Vaugan. Did I not addreſs my ſelf to the Captain when I came aboard? How came I to tell you I was an *Iriſh*-Man?

R. *Crouch.* They were all *Scotch*-men, *Engliſh*-men, and *Iriſh*-men.

Mr. Phipps. Mr. *Vaughan*, you need not take up the time of the Court about that matter. Mr. *Cowper*, you may go on.

Mr. Sol. Gen. Did the Priſoner own that he acted by the *Fr.* King's Commiſſion? Did you know any thing of his having a *French* Commiſſion?

R. *Crouch.* Yes, I heard he had one, but I did not ſee it, but I heard ſo by the Company.

L. C. J. *Holt.* Were there any *French*-men a-board?

R. *Crouch.* No, not that I know of. They were *Dutch*-men, and *Engliſh*-Men, and *Scotch*-men, and *Iriſh* Men.

Mr. Cowper. Call *T. Noden* (Who appear'd and was Sworn.) Do you give my Lord and the Jury an Account of taking the Veſſel, call'd the *Two-and-Twenty-Oar-Barge.*

T. Noden. Laſt Year, about *June* or *July*, to the beſt of my Remembrance, I belong'd to his Majeſty's Ship the *Coventry*, and we took the *Two-and-Twenty-Oar-Barge.*

L. C. J. Holt. How many *Dutch* men were aboard?

T. Noden. I do not know of above one.

L. C. J. Treby. What were the reſt? Were there any *French*-Men?

T. Noden. Yes, there were ſeveral *French*-Men aboard. I belong'd to the *Coventry.* And as we were ſailing by the *Nore*, and the *Gunfleet*, our Captain ſpy'd a ſmall Veſſel ſailing by the Sands, and he ſuppos'd her to be a *French* Privateer, and he fir'd a Gun to make them bring to, and they did not obey; and at laſt fir'd a Gun, Shot and all, and they would not come to. Then the Captain order'd to Man the Boat, and row after them: So the *Barge*, and *Pinnace*, and Long-Boat were Mann'd; and they came pretty near them. This *Barge* we took, was aground alſo, and they got her afloat, and ſhe run aground again:

And

And as they were aground, moſt of them out of the Boat, our Long-Boat ſtruck aground; and waded after them near half a League, and when we came to the *Barge*, there was this Captain *Vaughan*, and two or three and Twenty more. And there was two *Dutch*-Men, and, as I apprehended, ſome *French*-men; there was in her a Blunderbuſs, and ſmall Arms, and a conſiderable quantity of Hand-Granadoes.

L. C. J. Holt. What Veſſel was you aboard?

T. Noden. The *Coventry.*

Mr. Sol. Gen. What Country-man did Captain *Vaughan* ſay he was?

T. Noden. I did not hear any thing of it. Our Captain Examin'd the *Dutch*-man what Country-man the Commander was, and he ſaid he was an *Iriſh*-man; but I did not hear it my ſelf. When Captain *Vaughan* was brought aboard the *Coventry*, I was put aboard the Prize we had taken.

Mr. Cowper. Had you any diſcourſe with Captain *Vaughan.*

T. Noden. No.

L. C. J. Holt. Did they endeavour to take your Ship?

T. Noden. No, but endeavour'd to get away from us.

L. C. J. Holt. What Guns or Ammunition had they?

T. Noden. I cannot tell particularly, there was ſome Canvaſs Baggs, every Man had a Carteridge-bag, and there were ſome Hand-Granadoes.

Mr. Whitaker. What Fire-Arms had they?

T. Noden. I cannot ſay how many, but they had Muskets and Piſtols, and two Blunderbuſſes.

Mr. Cowp. Did you underſtand whence this Ship the *L. Clancarty* came?

T. Noden. The *Dutch*-man ſaid they came from *Calis.* As near as I can gueſs, we ſpy'd them about Eleven a Clock, and we weigh'd Anchor in the Afternoon, on *Sabbath-day*, and they took us to be a Light Collier, and endeavour'd to board us, as the *Dutch*-man ſaid; but when they knew what we were, they endeavour'd to eſcape from us.

Mr. Cowp. Call *Sam. Oldham.* (Who appear'd, and was Sworn.) *Mr. Oldham*, was you aboard the *Coventry*, when ſhe took the Ship call'd the *Clancarty*?

Sam. Oldham. Yes, I was.

Mr. Cowper. Pray give an Account what you obſerved of the Priſoner *T. Vaughan* then?

Sam. Oldham. We weigh'd our Anchor firſt at the *Boy* and *Nore*, ſo we ſaw a Prize in the Morning, the Captain ſaid it was a Prize, and we made Sail after him, and they ran on the *Goodwin Sands*; and the Captain ſeeing the Barge run aground, we fir'd at her to bring her to; we fir'd a ſecond, and ſhe would not come to, but ran aground again. When ſhe was aground, by the Captain's Order, we mann'd our Boats, and out we went after her.

Mr. Cowper. Did you take her?

Sam. Oldham. We went and our Long-Boat ran aground; I was in the Long-boat, and we waded, I believe, a Mile and half after her.

L. C. J. *Holt.* What *French*-men were aboard?

Sam. Oldham. I cannot juſtly ſay whether there were any.

L. C. J. *Holt.* Were there any?

Sam. Oldham. I think one or two.

Mr. Cowper. Were there any *Dunkirkers* or *Walloons* aboard?

Sam. Oldham.

Sam. Oldham. There was a *Dutchman*, who they call'd a *Fleming*, and I diſcours'd him.

L. C. J. Holt. How many *Outlandiſh* men were there aboard? was there a dozen, or how many?

Sam. Oldham. I cannot ſay the quantity.

Mr. *Cowper.* Was there more than two or three.

Sam. Oldham. Yes, more than two or three.

L. C. J. Holt. What Forraigners?

Sam. Oldham. Yes. And there were two *Engliſh-men.*

Mr. *Cowper.* What did you obſerve of the Priſoner at the Bar, at the taking of the Ship?

Sam. Oldham. I did not come aboard along with the Priſoner, but with his Man, and his Man ſaid he was an *Iriſh-man*, and that he was Commander of the Boat.

Mr. *Soll. Gen.* What was their deſign in that Ship *Clancarty?*

Sam. Oldham. I cannot tell that.

Mr. *Cowper.* Did they reſiſt, in their being taken?

Sam. Oldham. I cannot tell that, I ſaw no Arms.

Mr. *Cowper.* You were in the Action, was there any reſiſtance made?

Sam. Oldham. I ſaw no reſiſtance, they offered to run, they were aground once, and got off again.

Mr. *Phipps.* You ſay there were Forraigners, what Countrey-men did you believe thoſe Forraigners to be?

Sam. Oldham. I cannot juſtly ſay, I believe *Dutch-men.*

L. C. J. Holt. How many *Dutch-men* were there?

Sam. Oldham. I cannot ſay.

Dr *Oldiſh.* But you ſaid there were ſome two or three *French-men*, and that they ſpoke *French*; do you underſtand *French?*

Sam. Oldham. No Sir.

Dr. *Oldiſh.* Then how do you know they were *French-men*, and ſpoke *French.*

Sam. Oldham. They ſaid they were, they did not ſpeak *Engliſh*, ſeveral of the Ships Company ſaid they were *French.*

L. C. J. Holt. If they were all *Dutch-men*, and appear in a hoſtile manner againſt the King of *Englands* Subjects, they are Enemies, tho we are in League with *Holland*, and the reſt of the Seven Princes.

Mr. *Phipps.* The Indictment runs, That the *French* King, *quandam Navicu-lam vocat*, The Loyal Clancarty; *cum quam plurimis ſubditis. Gallicis Inimicis Dei Domq; nunc ad numerum quidem Perſonarum replet preparavit.*

L. C. J. Holt. Suppoſe it doth.

Mr. *Phipps.* It is *Subditis Gallicis*, my Lord.

L. C. J. Holt. They will be Subiects in that matter, if they act under his Commiſſion: they are Enemies to the King of *England*, and they have made themſelves the *French King's Subjects* by that Act.

Mr. *Phipps.* It appears not that they are *French-men*, my Lord.

L. C. J. Holt. If *Dutch-men* turn Rebels to the States, and take Pay of the *French King*, they are under the *French King's* Command, and ſo are his Subjects. Will you make them Pyrates when they act under the Commiſſion of a Soveraign Prince? They are then *Subdit* to him, and ſo *Inimice* to us.

Mr. *Phipps.* It does not take away their Allegiance to their Lawful Prince. They may go to the *French King*, and ſerve him, yet that does not tranſfer their

Allegiance from their Lawful Prince to the *French King*, and make them his Subjects. But however, to make them Subjects within this Indictment, they must be *Gallici Subditi*; so they must be *Frenchmen* as well as Subjects.

L. C. J. Holt. Acting by Vertue of a Commission from the *French King*, will excuse them from being Pyrates, tho not from being *Traitors* to their own State, but to all other Princes and States against whom they do any Acts of Hostility, they are Enemies; And their serving under the *French* Kings Commission, makes them his Subjects as to all others, but their own Prince or State. And tho they be not *Frenchmen*, yet they are *Gallici Subditi*; for it's the *French* Subjection that makes them to be *Gallici Subditi*.

Mr. *Phipps.* Pray my Lord, suppose a Subject of *Spain* should go over to the *French* and Fight against *England*; I take it, he may be termed an Enemy of the King of *England*, tho his Prince be in League with ours, but with submission, he cannot properly be said to be a Subject of the *French King*; For suppose an Indictment of Treason against a Foreigner, should say, *that he being a Subject, did commit Treason*; and it be proved he is not a Subject, with submission, he must be acquitted.

Mr. *Cowper.* There is a Local Allegiance while he is in the Country, or Fleets, or Armies of the *French King*.

L. C. J. Holt. Dutchmen may be Enemies, notwithstanding their State is in Amity with us, if they act as Enemies.

Mr. *Cowper.* Call *R. Bub.* (He was sworn) Was you aboard the *Coventry*, when she took the *Clancarty*?

R. Bub. Yes Sir.

Mr. *Cowper.* Give an Account what you know of the Prisoner, *Tho. Vaughan*, at the taking of that Ship.

R. Bub. We came aboard the *Coventry*, and were at the *Nore* at Anchor, our Pennant was taken down to be mended. So in the Night Captain *Vaughan*, with his two and twenty Oar Barge, rounded us two or three times. In the Morning we weigh'd Anchor, and fell down in order to go to the *Downs*; and we came up with them, and fir'd at Captain *Vaughan*, and he would not bring to. With that our Captain order'd to have the Barge, and Pinnace, and Long-Boat, to be mann'd, to go after him. They follow'd him, and at last came up with him, and came up pretty near; but could not come so near with the Long-Boat, but were fain to wade up to the middle a Mile and a half. We hoisted our Colours; in order to fight them, and bore down still upon them; and they would not Fight our Men. And we took them out, and when they came aboard, the *Englishman* that was a *Pilot* was to have his Freedom, to Pilote them up the River. He confest to the Captain, that Captain *Vaughan* intended to burn the Ships in the Harbour. And the next day after the *Pilot* had confessed it, Captain *Vaughan* himself confest it on the Deck, that he came over with that design.

Mr. *Cowper.* Who did he confess it to?

R. Bub. To the Boat-swain and Gunner, as he was on the Deck, on the Lar-Board side, that he came on purpose to burn the Shipping in the Harbour.

L. C. J. Holt. Did he confess that himself?

R. Bub. Yes, my Lord.

L. C. J. Holt. Whereabout was this, at the *Buoy* in the *Nore*?

R. Bub. In the *Downs*, my Lord.

L. C. J. Holt. Where did the Ships lye, that were to be burn'd?

R.

R. Bub. At *Sheerneſs.*

Mr. *Soll. Gen.* He own'd himſelf to be an *Iriſhman*, did he not?

R. Bub. Yes.

Mr. *Cowper.* And that he came from *Callis*?

R. Bub. Yes.

Mr. *Cowper.* Had you any diſcourſe with him about a Commiſſion?

R. Bub. No. But our Lieutenant and Captain had, but it was not in my hearing; I will not ſpeak further than I heard, and what I can juſtify.

Mr. *Soll. Gen.* Will you ask him any Queſtions?

Mr. *Phipps.* No.

Mr. *Soll. Gen.* Then call Mr. *Jo. Crittenden*, Marſhal of *Dover Caſtle.* (who was Sworn) Mr. *Crittenden*, Pray what did you hear the Priſoner at the Barr confeſs of his deſign in coming to *England*?

Mr. *Crittenden.* I did not hear him ſay any thing of his deſign.

Mr. *Soll. Gen.* What did he confeſs?

Mr. *Crittenden.* He confeſt he was an *Iriſhman.*

Mr. *Whitaker.* Upon what occaſion did he confeſs that?

Mr. *Crittenden.* When I enter'd him into my Book, I ask'd him what Countreyman he was.

Mr. *Cowper.* What are you?

Mr. *Crittenden.* I am the Marſhal of *Dover Caſtle.*

Mr. Cowper. By what Name did he order you to enter him?

Mr. Crittenden. Thomas Vaughan an *Iriſhman.*

L. C. J. Holt. Upon what Account did you enter him?

Mr. Crittenden. As a Priſoner.

Mr. Cowper. Did he ſpeak any thing of a Commiſſion?

Mr. Crittenden. I did not hear him ſay any thing of that.

Mr. Phipps. Have you your Book here?

Mr. Crittenden. Yes Sir.

Dr. Oldiſh. Was he not in Drink when he ſaid ſo?

Mr. Crittenden. I believe he was not very ſober indeed.

Mr. Phipps. Did you ever after hear him ſay he was an *Iriſhman*?

Mr. Crittenden. The next day he deny'd it.

Mr. Cowper. When he had conſider'd the danger of it.

Mr. Crittenden. The next day he was examin'd by ſome of the Juſtices of the Peace.

Mr. *Soll. Gen.* Was you by when he was examined by the Juſtices?

Mr. *Crittenden.* Yes.

Mr. *Soll. Gen.* What did he then ſay?

Mr. *Crittenden.* Then he ſaid he was of *Martenico.*

Mr. Soll. Gen. Set up Mr. *Bullock* (who was ſworn.) Mr. *Bullock*, do you know the Priſoner at the Bar?

Mr. *Bullock.* Yes.

Mr. Sol. Gen. Pray what have you heard him ſay of his Deſign that he came into *England* for?

Mr. *Bullock.* He came to *Dover* about the 14*th* of *July* 1695. as I remember: I went with ſeveral others, who were brought by the Captain of the *Coventry*, and the Lieutenant, and ſome others: And when we came thither, he there owned himſelf an *Iriſhman*; but when he went the next day to be examined, he ſaid he was of *Martenico.* He told me he had that Barge from the Duke of *Bulloign*, and came on the Coaſt, and was chaſed into the *Flatts*, where they took him.

La

L. C. J. Holt. Did you ever hear him ſay he had any Commiſſion from the *French King?*

Mr. *Bullock.* I know nothing of that; it was late, and we did not examine him then; but the next day, when he came to be examined, he ſaid he was of *Martenico.*

Mr. Sol. Gen. What did he ſay his deſign was?

Mr. *Bullock.* He ſaid, that ſeeing the Boat at *Bulloign*, he bought it of the Duke of *Bulloign*; and the Duke ask'd him what he would do with her? and he ſaid, he would fit her up, and go and take a Ship at Sea, that is upon our Coaſts.

Mr. *Phipps.* We are in your Lordſhip's Judgment, whether we need give any Evidence; for we think they have not proved their *Indictment:* For the *Indictment* ſets forth, *That the* French *King fitted out the* Loyal Clancarty, *of which* Thomas Vaughan *was Commander; and that very many* Frenchmen, *Subjects of the* French *King, were put on aboard.* Now the firſt Witneſs ſwears, there were no *Frenchmen*; and another ſwears there was one or two; another, that they were Forreigners, but does not believe they were *Frenchmen:* So there is no proof of that part of the Indictment; nor is there any proof that he was Captain of the *Loyal Clancarty:* So that none can ſay, it is the ſame Veſſel mentioned in the Indictment: Nor is any Act of Hoſtility proved; for all the Witneſſes ſay, that Vaughan *never pretended to attack them, but run from them.* So that all they depend on, to ſupport the Indictment, is to prove that he had a *deſign to burn the Ships at* Sheerneſs: Which will not ſerve their turn; for the words of the Indictment are, *ad prædandum ſuper altum mare.* Now *Sheerneſs* is not *ſuper altum mare*, but *infra Corpre Comitatus*, and then not within the Indictment.

Mr. *Cowper.* The words, *Ships at Sheerneſs*, do not imply, that the Ships lay within the Town of *Sheerneſs*, but off of *Sheerneſs*, which is *altum mare.*

Mr. *Phipps.* Then it is not in your Indictment; for that ſays at *Sheerneſs.*

Mr. *Cowper.* No, off of *Sheerneſs.*

Mr. *Soll. Gen.* It is no contradiction, to ſay the *Sea* is within part of a County.

Mr. *Phipps.* The Indictment ſays, at *Sheerneſs.*

Mr. *Soll. Gen.* Off of *Sheerneſs*, is the High *Sea.*

Mr. *Phipps. Sheerneſs* is not the *Buoy* in the *Nore.* Then you muſt prove he was Captain at this time: For the Indictment ſays, *Ad tunc fuit Capitaneus & Miles.*

L. C. J. Holt. One Overt Act of Adhering to the Kings Enemies, is, that he put himſelf as a Souldier on Board the Ship.

Mr. *Phipps.* You will make one part agree with another, that the *French King* did ſet out a Ship, and gave him a Commiſſion to be Captain of her.

L. C. J. Holt. The Witneſſes have proved he acted as a Captain.

Mr. *Phipps.* He was taken, and ſure if he was taken, he muſt have his *Commiſſion* with him.

Mr. Soll. Gen. Examine the Marſhal, he took an Account of him; and by direction of Mr. *Vaughan* himſelf, he entered him as Captain; and he enter'd ſeveral men in the Ship as *Frenchmen*, by their own direction. (Mr. *Crittenden* was call'd) Mr. *Crittenden*, have you got your Book in which you made the Entry?

Mr. *Crittenden.* Yes, I have it.

Mr. Soll. Gen. By whoſe Order did you enter them?

Mr

Mr. *Crittenden.* By the direction of Captain *Vaughan*, the Priſoner at the Bar.

Mr. *Cowper.* How did you know he was a Captain?

Mr. *Crittenden.* Becauſe he told me he was Captain, and I enter'd him as ſuch in my Book.

Mr. Soll. Gen. Captain of what?

Mr. *Crittenden. The Loyal Clancarty?*

Mr. Soll. Gen. Pray read your Entry in your Book.

Mr. *Crittenden. Thomas Vaughan*, Captain, *Iriſhman*, the 14*th* of *July* 1695. and ſo of all the reſt of the Ship's Crew.

Mr. Juſtice *Turton.* Did you write theſe in the preſence of Capt. *Vaughan?*

Mr. Crittenden. Yes, in the ſame Room where he was.

Mr. Phipps. Did you write it by his direction?

Mr. Crittenden. For his own part, by his direction; and for the reſt, by their direction.

L. C. J. Holt. Take all the circumſtances together, it is great evidence, conſidering what they were about, and what Veſſel they had. *Mr. Crittenden*, can you tell how many *Frenchmen* were there.

Mr. Crittenden. I will tell you preſently (he counts them in his Book) there were thirteen.

Mr. Soll. Gen. Did Captain *Vaughan* hear any of them bid you enter them as *Frenchmen?*

Mr. Crittenden. I cannot be poſitive in that, I ſuppoſe he did, he was in the ſame Room.

L. C. J. Holt. Do you expect Witneſſes from *France*, to teſtify where they were Born and Chriſten'd?

Mr. Phipps. One Witneſs ſays there was not one *Frenchman* there.

L. C. J. Holt. Not to his Knowledge.

Mr. Soll. Gen. What do you know of his having a *French* Commiſſion?

Mr. Bullock. I did not ſee it.

Mr. Whitaker. Did he own his having any *French* Commiſſion?

Mr. Bullock. I cannot tell.

Mr. Juſtice Turton. He own'd himſelf a Captain.

Mr. Phipps. He might be a Captain in another Ship, but not in this Ship; they ought to prove he was Captain at that time, in that Ship, by the *French* Kings Commiſſion.

L. C. J. Holt. All the Witneſſes ſay he Acted as a Captain at that time.

Mr. Cowper. He own'd himſelf the Captain of the Loyal *Clancarty.*

Mr. Bar. Powis. What can be plainer, than that he owned himſelf Captain?

Dr. Oldiſh. This ſeems to me a very ſtrange proof, to be built only upon the ſayings of theſe Perſons, that they were *Frenchmen*, and this to a man who had no Authority to examine them, when it might have been eaſily proved in a regular way, in caſe they had been ſo; they might have been examined before a Magiſtrate, and thereby it would have appeared whether they were *French* or no. And 'twas abſolutely neceſſary in this caſe, becauſe of the contrariety of the Witneſſes; for the firſt Witneſs ſaid, there was no *Frenchman* aboard; the next ſaid there were two *Frenchmen* and a *Dutchman*; and *Crittenden* ſaid, there were 13. Now how can theſe be reconciled, unleſs there had been a Legal Examination of the Parties? But the thing we would chiefly go on is this, I think they have fail'd in the Foundation of the Treaſon;

ſon; that is, to prove the Priſoner a Subject of this Crown; neither is there the leaſt colour of proof thereof. At Night he came to Mr. *Crittenden*, and is in drink, there he ſays he is an *Iriſhman*; the next morning, when he is examin'd before the Juſtices, then he comes in a kind of Judgment, and then ſuch a confeſſion would be of moment; but then he confeſſes himſelf to be a *Frenchman* of *Martenico*. Now, my Lord, what credit is to be given to theſe confeſſions; when before the Marſhal he ſhall ſay, *I am an Iriſhman*; and the next day, when he is on examination, he declares himſelf a *Frenchman*; in one confeſſion he is in drink, in the other ſober? Now, my Lord, I ſay, what proof is here? Here then the Foundation of the *Treaſon* fails: For the Indictment is, *That he being a Subject of the King of* England, *levies War*. Now my Lord, if this Quality be not proved, all the reſt of the Indictment falls to the ground: for it is impoſſible for him to commit *Treaſon*, where he is not a Subject; becauſe there can be no Violation of Allegiance. So that if he be a *Frenchman*, as he declared before the Juſtices, he cannot be guilty of *Treaſon*. So that here they have fail'd in the Foundation of all; that is, to prove him a Subject of *England*. And becauſe they affirm him to be ſo, it lies on thoſe that affirm it, to prove it. But perhaps now they will ſay, that theſe little confeſſions of his will throw the burthen of proof on him. By no means; when here is a ſtronger preſumption on the other ſide; a meer extrajudicial ſaying to Seamen, *that he is an Iriſhman*, cannot ballance his confeſſion examined before the Juſtices, wherein he ſays he is a *Frenchman*; and ſo can never throw the burden of proof on him. Therefore it lies on them that aſſert this, to prove it. But, my Lord, tho it doth not lie on him, yet we will prove him to be a *Frenchman*, and born at *Martenico*, by thoſe that were at the chriſtening of him, and have known him from time to time ever ſince. And becauſe they ſay he can ſpeak *Engliſh*, if you pleaſe to examine him, you ſhall hear him ſpeak Natural *French*; ſo that that cannot prove him to be a Natural *Iriſhman*.

Mr. Phipps. Such a Saying of a Foreigner will be of no great weight; becauſe if a man go into a Foreign Country, he may ſay he is that Countryman, to get the more favour.

L. C. J. Holt. What, to hang himſelf?

Mr. Phipps. No, my Lord, a man that comes into a ſtrange Country, may very well think he ſhall find better uſage, by pretending to be of that Country, than by owning himſelf to be a Foreigner. But we will prove *Vaughan* to be a *Frenchman*. Call *Robert French*. (Then *Rob. French* was ſworn) *Mr. French*, Pray give the Court and Jury an account, whether you know *Mr. Vaughan*, the Priſoner at the Bar, and how long you have known him, and what Countryman you take him to be, and the Reaſon why.

Rob. French. I have known him this 14 years.

Mr. Phipps. Where did you ſee him then?

Rob. French. I ſaw him in Saint *Chriſtophers*.

Mr. Phipps. Pray give an Account how you came to know him.

Rob. French. About 16 years ago I was at *Mount-Surat*, and I came to St. *Chriſtophers*, and there I chanc'd to come into *Engliſh* Ground, among the Factors; and ſo they brought me to the *French* Ground; and coming there, I was in company with ſeveral others that Night, and it happened I was told there was one Mr. *Vaughan* there; and I coming acquainted with him, he ſhewed me this Youth (he was a Youth then); He told me he was his Son, and recommended him to me, becauſe he look'd on me to be a man in truſt and buſineſs.

Mr.

Mr. *Phipps*. From that time what has he been reputed?

Rob. French. A Sea-faring man.

Mr. *Phipps*. But what Countryman?

Rob. French. To be born in *Martenico*.

Mr. *Phipps*. In whoſe Dominion is that?

Rob. French. In the *French* King's Dominion.

Mr. Juſtice *Turton*. What occaſion had you to diſcourſe of the place of his birth?

Rob. French. Becauſe his Father was look'd upon to be a *Frenchman*.

Mr. Juſtice *Turton*. His Father was a *Frenchman*.

Rob. French. Yes, my Lord, and lived at *Martenico*.

Mr. *Cowper*. How old might he be at that time?

Rob. French About fifteen or ſixteen.

Mr. *Cowper*. How came you to be talking of his birth, and with whom?

Rob. French. One that was talking with me, told me, his Name was *Vaughan*, and that he was born there.

Mr. *Cowper*. What introduc'd this diſcourſe? How came he to tell you this, that he was born in that place?

Rob. French. His Father told me ſo.

Mr. *Cowper*. You were talking of one *Vaughan* of his Name; How many were in company when there was this talk?

Rob. French. There were many of them.

Mr. Cowper. Name them.

Rob. French. It is ſo long ago, I cannot remember them.

Mr. Cowper. Name as many as you can of them, as many as you do remember.

Rob. French. One Mr. *Bodiken*, a Factor.

Mr. *Cowper*. Who elſe?

Rob. French. Several others.

Mr. *Cowper*. You named one *Vaughan* before.

Rob. French. Yes, I did.

Mr. *Cowper*. But you had forgot him now.

Rob. French. No, there was one *Vaughan*.

L. C. J. Holt. Were there any more?

Rob. French. Yes, there was. I remember the company that went along with me.

L. C. J. Holt. Who were they?

Rob. French. There were ſeveral Paſſengers that went over with me.

L. C. J. Holt. How came you to talk of this man's Nativity?

Rob. French. Becauſe his Father ſaid, he had not been out of the Iſland in 20 years (at which the People laught.)

Mr. *Cowper*. What place was this diſcourſe in?

Rob. French. At St. *Chriſtophers*.

Mr. *Cowper*. How did his Father's ſaying, he had not been out of that Iſland in 20 years, prove his Son was born there?

Rob. French. Becauſe he recommended him to me as a Sea-faring man.

Mr. *Cowper*. What is that a Reaſon of? What is that to his being born at *Martenico*?

Mr. Juſtice *Turton*. What Countryman are you?

Rob. French. I am an *Iriſhman* born.

L.

L. C. J. Holt. His Father acknowledg'd himſelf to be an *Iriſhman* born, did he not?

Rob. French. No, my Lord, he did not ſay where he was born: I do not know.

Mr. Juſtice *Turton.* Have you continued any acquaintance with Mr. *Vaughan* ſince? How long did you ſtay at St. *Chriſtophers*?

Rob. French. I ſtay'd but four and twenty hours, to take in water.

L. C. J. Holt. How long was it after this, before you ſaw this Gentleman, Captain *Vaughan*?

Rob. French. I never ſaw him ſince, till I ſaw him in *London.* (Then the People laugh'd)

L. C. J. Holt. Pray Gentlemen have patience. How do you know now that this is the ſame Man, that you ſaw fourteen years ago? For there muſt be a great alteration in a Man in fourteen years time, from what was at that time, being but fifteen years of Age.

Rob. French. I believe in my Conſcience this is the Man.

L. C. J. Holt. Can you take it upon your Oath he is the Man?

Mr. *Bar. Powis.* In what Language had you this Diſcourſe?

L. C. J. Holt. How long were you in company with him and his Father?

Rob. French. I believe five or ſix hours.

Mr. *Bar. Powis.* In what Language was this Diſcourſe with his Father?

Rob. French. My Lord, he ſpoke *Engliſh*, a ſort of broken *Engliſh.*

L. C. J. Holt. Where do you live your ſelf?

Rob. French. I live in *Ireland.*

L. C. J. Holt. How long have you lived there?

Rob. French. Nine or Ten Years.

L. C. J. Holt. VVhereabout in *Ireland*?

Rob. French. In *Connaught.*

L. C. J. Holt. Nine or Ten Years?

Rob. French. Yes, my Lord.

Dr. *Littleton.* Did not Captain *Vaughan*, nor his Father ſpeak *Iriſh* to you in that ſix hours?

Rob. French. No, my Lord.

Mr. *Juſtice Turton.* Hovv long have you been in *England*?

Rob. French. Not above tvvo Months.

Mr. Juſtice Turton. Did you hear of Captain *Vaughan* being to be try'd?

Rob. French. No, my Lord.

Mr. Juſtice Turton. Hovv did he come to hear of you then?

Rob. French. I heard he vvas in Tovvn.

L. C. J. Holt. It is a ſtrange thing, you have a moſt admirable memory, and Captain *Vaughan* has as good a memory as you; that you ſhould never have any intercourſe for fourteen years, and yet ſhould remember one an other after ſo long a time; It is a vvonderful thing too, that vvhen he could not knovv you vvere in Tovvn, and yet ſhould call you a VVitneſs on his behalf, ſure he muſt have the Spirit of Propheſie.

Rob. French. He did not ſend to me at all.

L. C. J. Holt. Hovv did you come to be here then?

Rob. French. I vvill tell you, It vvas my cuſtom alvvays to go and ſee Priſoners, and I heard there vvere Priſoners in *Newgate*, ſo I vvent to *Newgate*, and I met vvith one *Dwall*, and I asked him of another Gentleman that vvas there; and I vvent to the other ſide by chance, and I met vvith Captain *Vaughan.*

L.

L. C. J. Holt. What was thy Deſign? Why didſt thou viſit *Newgate*?

Rob. French. Becauſe it was my cuſtom, becauſe it was an Act of Charity.

L. C. J. Holt. Did you go to *Newgate* out of Charity?

Rob. French. I went to ſee my Friend, and carried a Letter to him. I went out of Charity.

Mr. *Phipps.* You were in the *Weſt-Indies*, upon the *French* ground; don't they ſpeak *Engliſh* on the *French* ground, and *French* on the *Engliſh* ground?

Rob. French. Yes.

Mr. *Cowper.* So they do here. Did you ever ſee Captain *Vaughan* before that time?

Rob. French. No.

Mr. *Whitaker.* Did you viſit lately any other Priſoners in *Newgate*, beſides Captain *Vaughan*?

Rob. French. Yes.

Mr. *Whitaker.* Give their Names.

Rob. French. I have viſited Mr. *Noland*, and another Gentleman that is with him, and I went into the houſe and drank with him there.

Mr. *Whitaker.* What is that other Gentlemans Name?

Rob. French. I do not remember his Name at preſent, but he is a Companion of Mr. *Nolands*.

Mr. *Whitaker.* Do you know him if you ſee him?

Rob. French. I, I would.

L. C. J. Treby. How long have you been in *England*?

Rob. French. But two Months.

L. C. J. Treby. Have you uſually viſited Priſoners in former years?

Rob. French. My Lord, wherever I have been, it was my cuſtom to do ſo.

L. C. J. Treby. But how doth it conſiſt, that you, who are an *Iriſhman*, ſhould come hither to viſit Priſoners in *Newgate*?

Rob. French. I can prove under my Lord Mayor of *Dublins* hand, that I came here upon buſineſs; and I went to the Priſon to viſit the Priſoners for Charity ſake, and did beſtow it according as I was able.

L. C. J. Holt. You had beſt ſtay there, and not go away, for we may have occaſion to ask you ſome queſtions.

Mr. *Cowper.* Do you not uſe, out of Charity, to be evidence for them?

Rob. French. No, never before now in my Life.

Mr. *Whitaker.* What other Priſons have you viſited, beſides *Newgate*?

Rob. French. I did viſit none.

L. C. J. Treby. Had you no Charity for other Priſons?

Mr. *Bar. Powis.* When you ſo viſit Priſons, on what Account is it? Is it to give Ghoſtly advice?

Rob. French. Upon a Charitable Account, my Lord.

L. C. J. Holt. Ghoſtly Advice, is Charity.

Mr. *Phipps.* Where is Mr. *Leſleur*? (He did not appear) Call Mr. *Gold*, (who appeared,)

Ct. of Arr. That Man is attainted, but pardoned.

Mr. *Phipps.* Mr. *Gold*, how long have you known Captain *Vaughan*?

Mr. *Gold.* I never knew Mr. *Vaughan*, before I ſaw him in the *Marſhalſea*.

Mr. *Phipps.* Is *Monſieur Leſleur* here? Is Mr. *Deherty* here? (Mr. *Deherty* appeared, and was Sworn.)

Mr. *Phipps*. Do you know *Mr. Vaughan*, the Priſoner at the Bar?

Mr. Deherty. Yes.

Mr. Phipps. How long have you known him?

Mr. Deherty. Five Years.

Mr. Phipps. What has he been reputed all along, ſince you have known him?

Mr. Deherty. *Frenchman*.

Mr. Phipps. Did you know him in *France*?

Mr. Deherty. Yes, and he was reputed a *Frenchman* there.

Mr. *Juſtice Turton*. What occaſion had you to enquire into that, the place of his Nativity?

Mr. *Deherty*. I did not enquire at all, and one that was his Servant, was my Comrade a great while.

Mr. *Phipps*. Now we will prove where he was Chriſtened, by one that was at his Chriſtening, Mr. *Daſcine*. (He appeared, and ſtood up, being Sworn, and ſpoke in *French* to the Court, pretending he could not ſpeak *Engliſh*.)

L. C. J. Holt. If he cannot ſpeak *Engliſh*, there muſt be an Interpreter.

Mr. *Soll. Gen*. They muſt find an Interpreter, he is their Witneſs.

Then a Perſon in Court ſtood up, and told the Court he could ſpeak *Engliſh* as well as he, that he had been a Bailiffs Follower for ſeveral years.

L. C. J. Holt. You can ſpeak *Engliſh*, can you not?

Mr. *Daſcine*. I will ſpeak as well as I can.

Kings Meſſenger. I am a Meſſenger to the King, do you not know me?

Mr. *Daſcine*. Yes.

L. C. J. Holt. Prithee ſpeak *Engliſh*.

Mr. Daſcine. As vvell as I can, my Lord, I vvill ſpeak.

Mr. Phipps. Are you ſvvorn?

Mr. Daſcine. Yes, my Lord.

Mr. Phipps. Do you knovv Captain *Vaughan*?

Mr. Daſcine. In 1669. I vvas in Saint *Chriſtophers*; I vvent from *Rhoan*, and from thence I vvent vvith Hats and Cloth to *Crebeck*, and had a Letter to one *Thomas Williams*, a Factor in *Martenico*. And after I had done, as I vvas coming avvay, Mr. *Williams* deſired me to go to a Chriſtning, a mile and Half from *Port-Royal*. He told me, there was one Mr. *Vaughan* had a Plantation there, and deſired him to be Godfather. And about two days after, I went from *Port-Royal* to St. *Chriſtophers* again, and I came to *Rhoan* again in a Ship called St. *Joſeph*. So in 1677, I went to St. *Chriſtophers* again, and from thence to *Martenico*, to Mr. *Williams*; I asked him, what is become of that Young man we were at the Chriſtening, and ſo he ſhewed me him that is here (pointing to the Priſoner.)

L. C. J. Holt. That was in 1677.

Mr. *Daſcine*. In 1677. So I came from *Port-Royal*; I went to St. *Chriſtophers*, and ſo took Sail, and came to *France* again. And 13 years ago I went to St. *Chriſtophers* again, and to *Mountſerat*, and *Martenico*; and ſo when I was at *Martenico*, and asked Mr. *Williams* of this Young man, that I was at his Chriſtening, and he ſaid, He is at ſuch an Houſe, and I ſaw him there.

L. C. J. Holt. Thirteen Years ago.

Mr. *Daſcine*. And we went and drank Punch together, and I came back for *Rhoan*.

L. C. J. Holt. VVhen did you ſee him ſince that?

Mr.

Mr. *Daſcine.* Never till I ſaw him here a Priſoner.

L. C. J. Holt. How do you know he is the man?

Mr. *Daſcine.* He has a bruiſe in his ſide.

Mr. *Phipps.* What was the Gentleman's Name, at the Chriſtning of whoſe child you were?

Mr. *Daſcine. Thomas Vaughan.*

Mr. *Phipps.* What was the child's Name?

Mr. *Daſcine. Thomas Vaughan.*

Mr. *Phipps.* When you went the next time to *Martenico*, did Mr. *Williams*, you ſpeak of, that was the Godfather, preſent this Perſon, Capt. *Vaughan*, to you, as the man who was then chriſtened?

Mr. *Daſcine.* Yes, the next time.

Mr. *Phipps.* Now is Captain *Vaughan*, that ſtands at the Bar, that very Gentleman?

Mr. *Daſcine.* I am ſure it is he.

L. C. J. Holt. You ſay this meeting was about 1669.

Mr. *Daſcine.* Yes.

Mr. *Soll. Gen.* Pray what was the reaſon you were ſo inquiſitive to know what became of that Perſon that was chriſtened when you was there?

Mr. *Daſcine.* Becauſe I being at the Chriſtening, I ask'd him how the child did.

L. C. J. Holt. How came you to take ſuch extraordinary Obſervation of that child? Was he ſuch a remarkable child?

Dr *Newton.* Where were you born?

Mr. *Daſcine.* In *France.*

Mr. *Whitaker.* What are you?

Mr. *Daſcine.* A Barber by Trade.

L. C. J. Holt. What Imployment have you?

Mr. *Daſcine.* An Officer in the Marſhal's Court ſometimes.

Mr. Juſtice *Turton.* What was this man's Father, what ſort of man was he?

Mr. *Daſcine.* A tall man.

Mr. Bar. *Powis.* What was his Father's Name?

Mr. *Daſcine. Thomas Vaughan.*

Mr. Juſtice *Turton.* Was his Father living when you was there the ſecond time?

Mr. *Daſcine.* The laſt time I was there I did not ſee his Father, but I ſaw his Father the ſecond time.

Mr. Juſtice *Turton.* But you ſaw Mr. *Williams*, his Godfather?

Mr. *Daſcine.* Yes.

Mr. *Phipps.* Call *Simon Danneaun.*

Tho. Vaughan. My Lord, he is ſick, and not able to come out of his bed.

Mr. *Phipps.* Call *Francis Harvey* (who was ſworn.)

Mr. *Phipps.* Do you know Captain *Vaughan?*

Fr. Harvey. Sir, In the year 1693. I was in *France*, with one Captain *Bontee*, who was taken Priſoner in *Auguſt* the ſame year; and my Captain he had the liberty to go up to *Paris* with a Guard, for his pleaſure, and to learn the Speech. And, as it happened, we came to lodge in a ſtreet, called, *Dolphin-ſtreet*, at the ſign of the *Crown.* And there was ſome Gentlemen, that were there to learn the Speech, that were my Countrymen; and there was a Young man there, and he was acquainted over the way, where this Gentleman, Capt. *Vaughan* lodged; He lodged at his Aunts, that ſold Silks, her Name was Madam *Wotton*; I ſaw this Gentleman there; I am ſure it is he; and with that I came acquainted with him, as well as the reſt.

Mr.

Mr. *Phipps.* What was he reputed there?

Fr. Harvey. A Captain of a Ship.

Mr. *Phipps.* VVhat did he go for there? a *Freuchman*, or an *Engliſhman*, or an *Iriſhman*?

Fr. Harvey. He went for a *Frenchman*, as I heard; One time his Aunt, ſhe ſaid, that he was born in the *Weſt Indies*, at *Martenico*, and that he was her Siſters Son, that lived in *Martenico*.

Mr. Sol. Gen. You ſay he was a Captain of a Ship; what Ship?

Fr. Harvey. That I cannot tell.

Mr. Sol. Gen. VVhen was that?

Fr. Harvey. In 1693.

Mr. *Phipps.* Is Mr. *Le-fleur* here?

Ch. of her. He is a Priſoner in the *Savoy*; he was taken in the ſame Ship with Mr. *Vaughan*.

Mr. *Phipps.* It is reaſonable he ſhould have been here, to give an Account of the Priſoner.

L. C. J. Holt. Then they ſhould have taken care to have had him here. Have you any more VVitneſſes?

Mr. Soll. Gen. I think we have given ſufficient Evidence that he is an *Iriſhman*; but now we ſhall ſhew you, that all your VVitneſſes have given a very extravagant Evidence to prove that he is a *Frenchman*. All he hoped for was, that the Proſecutors for the King could not be able to prove him an *Iriſhman*; He believed there were but 3 men could prove him ſo; that was *David Creagh* and 2 more; and ſo he writes to *David Creagh*, and tells him, *That his life was in his power, and he hoped he and the other 2 would not diſcover it.* This *David Creagh* was his Neighbour in *Ireland*; VVe will call him to prove that *Capt. Vaughan* was born at *Galloway* in *Ireland*.

Mr. *Whitaker.* And here is his Letter under his Hand. Bring *David Creagh*, (who was ſworn.)

Mr. *Cowper.* I deſire, before he give his Evidence, he may look upon thoſe that have given Evidence about the Priſoner, one by one. (Then he lookt upon *Rob. French*). Mr. *Creagh*, do you know him?

Dav. Creagh. No. (Then he look'd upon the reſt.)

Mr. *Cowper.* Have you had any of theſe men come to you on a meſſage?

D. Creagh. No, Sir.

Mr. *Soll. Gen.* Do you know *Tho. Vaughan*, the Priſoner at the Bar?

D. Creagh. Yes, I do.

Mr. *Soll. Gen.* How long have you known him?

D. Creagh. About 2 years.

Mr. *Soll. Gen.* VVas that your firſt Acquaintance with him?

D. Creagh. Yes.

Mr. Soll. Gen. VVhat place vvas he born at, as you have heard?

D. Creagh. At *Galloway* in *Ireland*.

Mr. *Soll. Gen.* From vvhom did you hear it?

D. Creagh. From all perſons that I have heard ſpeak of him.

Mr. *Soll. Gen.* Did he ever ovvn to you that he vvas born there?

D. Creagh. Yes oftentimes in my company.

Mr. *Sol. Gen.* Did you ever receive a Letter from him about your giving Evidence in this matter?

D. Creagh. Yes, Sir.

Mr. *Soll. Gen.* Do you knovv this Letter? (vvhich vvas ſhovvn him.)

D.

D. Creagh. Yes, Sir.

Mr. *Soll. Gen.* Do you knovv his Hand?

D. Creagh. Yes, I partly knovv it.

Mr. *Whitaker.* Did you ever ſee him Write?

D. Creagh. This is the Letter I received from him.

L. C. J. Holt. Read it. Do you think it is his Hand?

D. Creagh. I cannot ſwear it; but I believe it is his Hand.

Mr. *Phipps.* Have you ſeen him Write?

D. Creagh. I have ſeen him Write ſeveral times.

L. C. J. Holt. Do yon believe it is his Hand?

D. Creagh. Yes, my Lord, but I cannot ſwear it.

Then the Letter was read.

To Mr. *David Creagh*, in *Newgate*, Theſe.

Mr. *Creagh*,

I have ſome aſſurance that Mr. Whitaker *has no Witneſs to prove me a Subject of* England, *but you, and Two more, which I am glad of with all my heart; I hope I may have none againſt me that wiſh me worſe than you and Capt.* Etherington. *If Mr.* Whitaker *has not Sworn you yet, I hope you will not appear againſt me. I declare, if I had more than my Life, I would lay it in your hand. I am like to be ſent to* Newgate *this Day, and it is like you and ſome more will be ſent here, that we may not talk together. The* Dutch Dogs *took from me Eleven Hundred Dollars in money, which certainly troubles me more than the thoughts of Death, which I value not a Straw; but I hope in 4 or 5 days to be ſupplied. I fear they will keep me cloſe. I have all the liberty imaginable here to write, and my Friends ſuffered to ſee me. I can ſay nothing that is comfortable, but that I am very well in health, and nothing concerned, if my money come in time.*

Friday *morning*. T. Vaughan.

Mr. *Phipps.* Is that Letter proved? That is not to the purpoſe. Nor of any weight conſidering who proves it.

L. C. J. Holt. No, that none could prove him a Subject, but he and two more?

Mr. *Soll. Gen.* We will produce only one Witneſs more, call Mr. *Jo. Rivet.* The Court being informed by ſome Gentlemen then on the Bench, that there was a Gentleman then in Court one Mr. *Rivet*, who being of *Galloway*; could Probably give ſome Account of the Priſoner, he was immediately called, and required to depoſe what he knows.

Jo. Rivet. My Lord, I am ſorry I am called, where Life is concerned, when I came hither only out of curioſity; but the Service I owe to this Government, obliges me to ſpeak vvhat I knovv, novv I am called to it. (Then he vvas Svvorn.)

Mr. *Soll. Gen.* Do you knovv the Priſoner at the Bar? vvhat Countryman is he?

J. Rivet. I have knovvn him a great many years, vve vvere Children together in the ſame Tovvn, vve lived in *Galloway* in *Ireland*. I knevv his Father, and Mother, and Brothers, and Siſters; and I remember him a Child, as long as I can remember any thing, I cannot determine to a certain number of years; and I remember him not only a School-boy, but alſo an Apprentice to one Mr. *Coleman*. And I vvonder very much at vvhat Mr. *French* ſays, for by the Name and Place of his Birth, he muſt have Svvorn vvhat he knovvs to be othervviſe: For the *French*'s are a Family in *Galloway*; his Father was an Honeſt Gentleman, and went over into *Ireland* in the Rebellion in

1641. and he there married a Woman, a Native of *Galloway*, and had several children, one of which, in the latter end of K. *Charles's* Reign, turn'd Papist, and I believe the grief for it hastened his Father's death. I own part of the Evidence may be true, about his being in the *West Indies*, but his mother, I believe, was never out of *Ireland* in her life.

Dr. *Oldish.* What was his Father's Name?

Jo. Rivet. John.

L. C. J. Holt. You say, you knew this very Gentleman an Apprentice to one *Thomas Coleman* at *Galloway*.

Jo. Rivet. I did so, my Lord.

L. C. J. Holt. How long is it since you saw him?

J. Rivet. I cannot be positive, I think at the reduction of *Galloway* in 1691. I cannot say whether at or after; but I saw him about that time, and knew him, and have known him from a Child; I knew him a School-Boy, and knew his Brothers.

Mr. Justice Turton. What year did you know him first?

J. Rivet. I dare not be positive, I remember him particularly well.

L. C. J. Holt. Are you sure this is the Man?

J. Rivet. I know him as well as any face I ever saw. I came accidentally into Court out of Curiosity; and one that knew me, that was of *Galloway*, gave Account to the Kings Counsel, and so I am called to give evidence.

L. C. J. Holt. Do you know this *Rob. French*?

Jo. Rivet. I cannot say I know him, for I see him but in the Dark; if I saw him in a better light, it may be I may. (Then *Rob. French* was set up for Mr. *Rivet* to see him) I think I recollect the face, I am not certain.

L. C. J. Holt. Do you know this Gentleman?

Rob. French. No, my Lord.

L. C. J. Holt. Where did you live?

Rob. French. In *Connaught*.

L. C. J. Holt. Did you know *John Vaughan* of *Galloway*?

Rob. French. I have heard of him, my Lord.

Mr. Bar. Powis. What Trade was the Prisoner's Father?

Jo. Rivet. He had the Market several years, he lived very well, and kept a Publick House in the Town.

Mr. Phipps. Did you know any other *Thomas Vaughan* but this?

Rob. French. No, not in *Galloway*.

Jo. Rivet. This may be a confirmation of what I say; if it be the same Gentleman, his hair is reddish.

L. C. J. Holt. Pull off his Perriwig (which was done.)

T. Vaughan. My hair is not red.

L. C. J. Holt. How are his Eye-Brows?

T. Vaughan. A dark brown, my Lord, the same as my Wig.

Mr. *Bar. Powis.* Let some body look on it more particularly, (then an Officer took a Candle, and look'd on his Head, but it was shaved so close, the colour could not be discerned).

Mr. Phipps. We can give an Answer to this, my Lord; we shall prove, that there was one *John Vaughan* at *Galloway*, and he had a Son *Thomas*, that dyed ten years ago. As for Mr. *Rivet*, he is a meer stranger to us, we know nothing of him; and by what I can perceive, he comes in as a Volunteer, not subpœna'd by either side. And for Mr. *Creagh*, we shall shew he is not to be credited in any thing, for we shall prove him guilty of Felony, and that he

Swore, that if his Brother would not ſupply him with Money, he would ſwear Treaſon againſt him, and ſhop him in *Newgate*; and that he ſhould not come out till he came upon a Sledge; and if ſo, there is no body ſurely can believe he will ſtick at Perjury, or Forgery, or any thing elſe, which may be for his advantage; Call Mr. *Chriſtopher Crey* (vvho vvas Svvorn.)

Mr. *Phipps*. Pray do you knovv *David Creagh*?

C. Creagh. Yes.

Mr. *Phipps*. Is he any relation to you?

C. Creagh. Yes, he is my Brother.

Mr. Phipps. Give the Court and the Jury an account what you know of your Brother.

C. Creagh. It is an unnatural thing to come on this occaſion, and I am ſorry I am called on this account.

David Creagh. Speak what you have to ſay.

Mr. *Phipps*. What do you know of your Brother, whether you have not found him guilty of ſtealing any thing?

C. Creagh. My Lord, I am upon my Oath, I have known ſomething of it, he has ſtollen ſome Gold from me.

L. C. J. Holt. You pretend to be ſo very nice, you are to Anſwer to what you know of his reputation in general, and of his way of living.

C. Creagh. His reputation has been but very ſlender, I am very ſorry for it; ſeveral in the Court can give Account of it, as well as I. He ſerved a Relation of his in *New-Caſtle*, he ſerved there ſome time, and came to Town, and came to me, and depended upon me, and I ſubſiſted him; and he took an opportunity one day, when I and my Wife were gone abroad, and no body at home but the Maid, and went up ſtairs, where my Wives Room is, and there being a Saſh-Window, he opens it, and took out of my Wives Cloſet ſeveral pieces of Gold.

L. C. J. Holt. How did you know that he did it?

C. Creagh. I found it out afterwards; he was my Brother, and therefore I did not Proſecute him. I did not know he had it, till afterwards, that I found to whom he had diſpoſed of the Gold. I enquired who was in the Houſe, and thought the Maid had it; and ſhe ſaid none had been there, but my Brother; and he at laſt owned the Fact, and I had it again.

L. C. J. Holt. Have you any more to ſay of your Brother?

Mr. *Phipps*. Did he ever threaten to ſwear againſt you?

T. Vaughan. Or me?

C. Creagh. He has been confined in *Newgate* Eighteen Months, and I ſubſiſted him in Charity, I allowed him all along; and he has been ſending to me by ſeveral meſſages, that if I ſubſiſted him not with more Money, than I did allow him, he would ſwear me into a Plot.

L. C. J. Holt. Did he tell you ſo?

C. Creagh. No, but he has ſent me word ſo.

L. C. J. Holt. Is the Man here that he ſent you this word by?

C. Crey. Yes, the Man is here.

Mr. *Phipps*. Let him ſtand up.

L. C. J. Holt. VVhere do you live?

C. Creagh. In *Watlin-ſtreet*, I am a Merchant; I declare it is not in favour or affection, but only in conſcience, that I declare this.

D. Creagh. This is only to hinder me from giving my evidence againſt a Merchant that I have taken up.

T. Vaughan. VVhat Character had he in *Spain*?

Then *David Creagh* ſpoke, but was not heard.

L.

L. C. J. Holt. What do you ſay of the Gold?

C. Creagh. He had it, my Lord.

D. Creagh. Why did you not Proſecute me then, if I had it?

L. C. J. Holt. You are not ſure he took the Gold.

C. Creagh. I was ſo ſure he had it, becauſe I had it from him again by another hand.

L. C. J. Holt. Did he tell you ſo, that he had it?

C. Creagh. No, but I had a Letter about it.

L. C. J. Holt. Where is that Letter?

C. Creagh. I have it not here.

L. C. J. Holt. Give not an evidence of a Letter, without the Letter were here, it ought to have been produced.

Mr. *Phipps.* Call *Chriſtopher Heyden* (he was Sworn.) Do you give the Court an Account what *David Creagh* has ſaid to you of Swearing againſt any Body.

C. Heyden. Several times, when my Maſter has ſent me to him, to pay him Five Shillings a Week, or Five and Six Pence a Week, to ſubſiſt him.

Dr. *Oldiſh.* Who are you Servant to?

C. Creagh. He is my Servant.

C. Heyden. This *David Creagh* has oftentimes told me, that I ſhould tell his Brother, that if he would not ſupply him with more Money, he would Swear againſt him. When I came to the Seſſions-Houſe, when the *Pyrates* were tryed the firſt time, I was going through the *Bail-Dock*, where this *David Creagh* call'd to me, and I asked him what he did here? he ſaid he was to be evidence againſt Captain *Vaughan*. No certainly, ſaid I, you do not know him; do you? Says he, here's the thing, it had been better for me, that I had been an evidence againſt him before this; and I am forced to be an evidence againſt him, to ſave my ſelf: And he bid me tell his Brother, God damn his Soul to all Eternity, if he did not ſend him ſupply that day, he would have him in *Newgate*, and that he ſhould not come out again, till he came out upon a Sledge.

L. C. J. Holt. Did he ſay ſo?

C. Heyden. Yes, my Lord.

D. Creagh. How long is it agone, Mr. *Heyden*?

C. Heyden. It was the day the *Pyrates* were tryed; more than that, here was Mr. *Wroths* Man was with me at the ſame time; and becauſe he ſhould not hear what you ſaid, you took me to the door.

Mr. *Phipps.* Is *Daniel Bryan* here? (He appeared, and was Sworn.)

Dan. Bryan. I was ſubpœna'd here for I know not what: For I know not Captain *Vaughan*.

Mr. *Phipps.* Give me leave to ask you a Queſtion. Do you know, or have heard of *David Creagh*? *Dan. Bryan.* Yes, Sir.

Mr. *Phipps.* Will you give Account of what he has ſaid of Swearing againſt any Body?

Dan. Bryan. He has threatened his Brother ſeveral times, that if he would not ſend him relief, he would bring him in for ſomething, and would inform againſt him.

Mr. *Phipps* Did he ſay he would Swear againſt him?

Dan. Bryan. He did ſay he would inform againſt him.

Mr. *Phipps.* What did you hear him ſay of Swearing againſt any one?

Dan. Bryan. He ſaid, he had rather others ſhould periſh, than himſelf.

Mr. *Whitaker.* This Man was Condemned for the ſame Crime.

Mr. *Phipps.* Mr. *Vaughan*, have you any other Witneſſes? Call *Creighton* (who was Sworn.) What Countreyman are you?

Creighton. A *Connaught* Man, I was Born in *Galloway*, I believe Mr. *Rivet* knows me.

Mr *Phipps.* Did you know one *John Vaughan*, that lived at *Galloway*?

Creighton. I knew him very well.

Mr. *Phipps.* Do you know the Priſoner at the Bar?

Creighton. No.

Mr. *Phipps.* Do you remember, that that *J. Vaughan* had a Son *Thomas*, and what became of him?

Creighton. Yes, he had a Son *Thomas*, but I underſtood that he went ſomewhere into the Countrey, and there dyed, and it was ſpread all about the Town.

Mr. *Phipps* Do you know what he dyed of?

Creighton. I cannot tell.

L. C. J. Holt. How long ago did he dye?

Creighton. About Ten Years ago. I knew all the Brothers.

Mr. *Phipps.* Did you know that *Thomas Vaughan*?

Creighton. I knew him very well.

Mr. *Phipps.* Is that Gentleman, the Priſoner, he? *Creighton.* No.

Mr. *Phipps.* Do you believe that is not the Man? *Creighton.* I believe not.

Mr. *Phipps.* Did you ever know any other *Thomas Vaughan*? *Creighton.*

Creighton. No.

Mr. J. Turton. Had not *John Vaughan* a Son Apprentice at *Galloway* to one *Thomas Coleman*?

Creighton. Not as I know of.

Mr. J. Turton. How old was that Son, *Thomas Vaughan* when you knew him?

Creighton. I was Born at the next Door to that *Thomas Vaughan* that was reputed to be Dead.

Mr. J. Turton. Was not that *Thomas Vaughan* Apprentice to Mr. *Coleman*?

Creighton. I cannot certainly tell.

Mr. J. Turton. How old was that *Thomas Vaughan* when he went away from *Galloway*?

Creighton. I cannot tell.

Mr. J. Turton. What is your own Age?

Creighton. My Age is about Five and twenty.

L. C. J. Holt. You have not seen him in ten Years?

Creighton. No, my Lord.

L. C. J. Holt. Can you take it upon your Oath, this is not the Man you saw ten Years ago, that *Thomas Vaughan* that you knew?

Creighton. Yes, my Lord.

L. C. J. Holt. How old was he when you were acquainted with him?

Creighton. I cannot tell certainly; I believe he might be about fifteen.

L. J. C. Holt. How long is that since?

Creighton. Ten Years.

L. C. J. Holt. What is your Name?

Creighton. Creighton.

Mr. Cowper. You say you knew him ten Years ago; Pray what sort of Person was he, and how did he differ from this Man?

Creighton. He was better Set, and not quite so Tall as this Man, and full of the Small-pox; he was the quarrelsomst Boy in the whole Town.

Mr. Sol. Gen. You say he was not quite so Tall as this Man.

Creighton. No, he was not quite so Tall.

Mr. Sol. Gen. Do you think he might not grow since? This was ten Years ago, when he was but fifteen Years old.

Mr. Cowper. You knew him at fifteen; How long had you known him?

Creighton. From my Infancy, till he departed the Town.

Mr. Cowper. During all that time what Imployment was he in? Tell some Circumstances.

Creighton. I think this *Vaughan* went to one Mr. *Russel's* School.

Mr. Cowper. What to do?

Creighton. To learn to write and read.

Mr. Cowper. And was he not an Apprentice in that time?

Creighton. I cannot tell.

Mr. Cowper. Were you acquainted with him?

Creighton. Yes.

L. C. J. Holt. You lived next Door to him, Sure you must be acquainted with him?

Creighton. He was a fighting Boy, for I remember he did once thrash my Coat soundly.

L. C. J. Holt. Where do you live now?

Creigton. At the *Castle* and *Faulcon* in *Aldersgate-street.*

L. C. J. Holt. What Trade are you?

Creighton. A Shoemaker.

Mr. Bar. Powis. How long have you lived here?

Creighton. This ten Years.

Mr. Bar. Powis. What did that *Thomas Vaughan* dye of, that you ſay was dead before you came away, as it was reported up and down?

Creighton. I cannot tell.

Mr. Cowper. Juſt now you ſaid he went away from *Galloway*, and it was reported then that he was dead ten Years ago; now you ſay you have been in *England* ten Years.

Creighton. I came into *England* about ten Years ago.

Mr. Cowper. Did you hear it at *Galloway* before you came away?

Creighton. I heard it at *Galloway* before I came to *London*, and there are many can teſtifie that there was a Report that he was dead.

Mr. J. Turton. How long was he gone from *Galloway* before you came away?

Creighton. I cannot ſay to an Hour; I heard he was dead.

L. C. J. Holt. Well, well, he went away from *Galloway*.

Mr. J. Turton. Have you not been here twelve Years?

Creighton. I think not; I came a little before the Revolution.

Mr. J. Turton. That is eight Years ago. Juſt now you ſaid you had been here ten Years.

Mr. Phipps. Call *John Kine*. (Who was Sworn.) *John Kine*, Did you know one *John Vaughan* in *Galloway*?

Jo. Kine. Yes, I lived with him.

Mr. Phipps. What Children had he?

Jo. Kine. Four Sons.

Mr. Phipps. Had he any one of thoſe Sons that was named *Thomas*?

Jo. Kine. Not of thoſe four.

Mr. Phipps. Had he a Son *Thomas*?

Jo. Kine. Yes, he had; he died about ten or eleven Years old of the Small-pox.

Mr. Phipps. You ſay you lived with this *John Vaughan*; look upon the Priſoner at the Bar, Is he any of thoſe Sons?

Jo. Kine. No, Sir, I never ſaw this Man till now.

Mr. Phipps. How long did you live with him?

Jo. Kine. About eight or nine Years.

Mr. Phipps. But how long have you been come away from him?

Jo. Kine. About ten Years.

Mr. J. Turton. How well do theſe two Witneſſes agree together? The other ſaid he died at fifteen, and was pitted with the Small-pox. This Man ſays he died at ten, and of the Small-pox.

L. C. J. Holt. Where do you live now?

Jo. Kine. I live in the City.

L. C. J. Holt. How long have you lived there?

Jo. Kine. Twelve Years.

L. C. J. Holt. How long was this *Thomas Vaughan* dead before you came hither?

Jo. Kine. Really I cannot be politive, I believe about eight or nine Years.

L. C. J. Holt. Did *Thomas Vaughan* dye of the Small-pox?

Jo. Kine. Yes.

L. C. J. Holt. That you are ſure of.

Jo. Kine. I am ſure that was the Diſeaſe he died of.

L. C. J. Holt. You know him well, I believe.

Jo. Kine. Yes, my Lord.

L. C. J. Holt. How old was he when he died?

Jo. Kine. About ten Years.

L. C. J. Holt. Where was he buried?

Jo. Kine. At *Galloway*.

Mr. J. *Turton.* Why does not the Officer take Care? There is one talking with the Witneſs. Can you now reconcile your Evidence? (To the Priſoner's Councel.)

L. C. J. Holt. Have you any more Witneſſes?

Mr. *Phipps.* No, my Lord.

Mr. J. *Turton.* What were the Names of all the Sons?

Jo. Kine. The eldeſt was *John Vaughan*, the other *William Vaughan*, another *Edward Vaughan*, and another *James Vaughan*; that was all that he has alive.

Mr. *Whitaker.* There is never a *Thomas Vaughan* among theſe.

Mr. *Cowper.* *Thomas* died up and down in ſeveral Places.

Mr. *Phipps.* Mr. *Rivet*, Do you know the Sons of that *John Vaughan*?

Mr. *Rivet.* He had all theſe Sons, *John*, *William*, *Thomas*, and *James*. He ſpeaks of a Son *Edward*, I cannot exactly remember whether there was ſuch a Son, or no; though I have a rude Idea of it, but am not certain. I knew this *Thomas*, I went to School with him, and I ſaw him in the Year 1691. about the ſurrender of *Galloway*.

Jury-man. Is that Man at the Bar the ſame *Thomas Vaughan*?

Mr. *Rivet.* I am poſitive of that.

L. C. J. Holt. You ſaw him at the ſurrender of *Galloway*?

Mr. *Rivet.* I did; it was about that time.

Thomas Vaughan. I am a Subject of the *Moſt Chriſtian King*, and I deſire, though I ſpeak *Engliſh*, that I may be Examined in *French*, in a Matter that touches me ſo near. And you may ſee by my Commiſſion, my Lord, that I am a *French-man*; which I deſire may be read.

L. C. J. Holt. We ſhall not trouble you with that.

T. Vaughan. I can ſhew you my Commiſſion, wherein the King, my Maſter, declares me to be a Subject of *France*.

Dr. *Oldys.* Mr. *Vaughan*, I think, you need not trouble the Court to read the Commiſſion; the Commiſſion is the ſame as for all other Subjects of the *French* King, wherein he is look't upon as a Natural born Subject of *France*; and ſo he owns himſelf upon his Examination before the Judge of the Admiralty.

L. C. J. Holt. Have you any more to ſay? As to the Examination, Who can prove that?

Mr. *Cawley.* I can prove that, my Lord. (Mr. *Cawley* was Sworn.)

L. C. J. Holt. Is that *Thomas Vaughan*'s Examination?

Mr. *Cawley.* Yes, my Lord, it is ſigned by him, and taken before Sir *Charles Hedges* the 25th of *July*, 1695.

L. C. J. Holt. Read it. Then Mr. *Cawley* read the Examination of *Thomas Vaughan*.

The

The 27th of *July*, 1695.

Officium Domini contra Thomam Vaughan *Capuem' Navicule*, the Loyal Clencarty.

The Examination of Thomas Vaughan *late Commander of the Ship, the* Loyal Clencarty, *aged about Twenty six Years, taken before the Right Worshipful Sir* Charles Hedges, *Kt. Judge of the High Court of Admiralty of* England.

THis Examinate saith, That he was born at *Martinico* within the Dominons of the *French* King, and is his Subject, but refuses to answer of what Parents he was born; That he came last from thence about four Years ago as Commander of a Ship called the *Hare*, which had been before taken from the *English*, and came in her to *Nants* in *France*, and hath ever since been in *France* or cruizing in *French* Ships; That he hath been a Commander ever since he was sixteen Years of age, and hath Commanded several *French* Privateers, and was Commander of a Privateer of St *Malo*, called, the *Granada* of 36 Guns, which about two Years ago took the *Diamond*, and the Examinate was never till now taken. Being asked, Whether he ever lived in *England*, or in *Ireland*? he refuses to answer. Being asked, Whether he knew any thing of the taking and carrying of a Custom-House Boat from the *Downs* to *Bulloigne*? or, Whether he was then in *London*, or did give directions to any Persons, or knew of her being carried off? he answered nothing, but said, That if any Person would prove it against him he was present to answer it: but saith, That in *France* he heard of her being brought to *Bulloigne*; and he the Examinate bought her at *Bulloigne* of the Men that carried her away, and that she cost him 900 and odd Livres, and was then called the *Elizabeth* and *Ann*, or *Michael* and *Ann*, but which, doth not remember; That he the Examinate still hath the said Vessel at *Bulloigne*; That he cannot tell the names of the Persons he bought her of, and that took her away, but believes they had a Commission; That something above three Weeks ago the Examinate went with a Commission from the *French* King on board a two and twenty Oar-Barge, called

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the *Loyal Clencarty* then at *Bulloigne* as Commander thereof, and on Munday last was a fortnight was taken by the *Coventry* Man of War at the *Buoy in the Gunfleet*; And that the Commander of the *Coventry* took away this Examinate's Commission, being asked upon what design he came out with the Barge, replied that it was not to take the Air; That the Barge formerly belonged to the Lord *Danby*, and was taken by a *French* Privateer about a Year ago; That before he came out, he met with two *English* Seamen upon the Court of Guards at *Bulloigne*, who told the Examinate, That they had been taken Prisoners, and the Examinate took them in upon Charity; and afterwards met another *English* Man, who told the Examinate that he had been taken in Land Service, and believes it was before Fort *Kenoque*; and the said Person sitting upon a Stone at *Bulloigne*, and not knowing what to do with himself, the Examinate took him on Board for Charity, and designed to put the said three Persons ashore in *England*. Being asked whether he did not put in a Claim for the said Custom-House Boat by reason of her Captain? or, Whether the Persons that took her had any Commission from him? he the Examinate answered, That they that took her must answer for what they did, and he must answer for his Actions only.

Thomas Vaughan.

Eodem die Capt' coram me

C. Hedges.

R. L. C. J. *Holt.*

L. C. J. *Holt*: Mr. *Vaughan*, Have you any more to say?

Tho. Vaughan. It is very hard Circumſtances I am under; if an *Engliſh* Man was in *France*, under the ſtraights that I am here, it would be very hard for him to prove himſelf an *Engliſh* Man.

L. C. J. *Holt*. You have had a very fair Tryal, and you ſhall have Juſtice, be it for you, or againſt you.

Tho. Vaughan. I hope your Lordſhip will do me Right.

L. C. J. Holt. Gentlemen of the Jury, The Priſoner at the Bar, *Thomas Vaughan*, ſtands Indicted for High-Treaſon, for adhering to the King's Enemies; *viz*: That he put himſelf as a Soldier in the Service of the *French* King, in a Veſſel called the *Loyal Clencarty*, with diverſe other Perſons on Board her, that were Subjects to the *French* King, and Enemies to the King of *England*, with a deſign to burn the King's, and his Subjects Ships; and for that purpoſe went in that Ship. That the Priſoner was on Board the Ship, and with ſuch a deſign, is proved, without all Contradiction, by ſeveral Witneſſes that have been produced; that is, that the Two and twenty Oar-barge, which is the ſame called the *Loyal Clencarty*, lay hovering about the *Buoy in the Nore*; thoſe Men in the *Coventry* imagined they had ſome deſign of Miſchief to the Ships, and they made after him with the *Coventry*. It was apprehended by Captain *Vaughan* and his Crew, that the *Coventry* would be too hard for them, and ſo they did ſubmit, and were taken. And being Examined on what account he came on our Coaſts, it is confeſt by him, That he came with a deſign to burn our Ships. You may obſerve what ſort of Men were a Board. You have heard it proved to you, that *Crittenden*, the Marſhal of *Dover*, entered thoſe Perſons taken a Board the *French* Veſſel, of what Nation, and what Quality they were; and there were about a Dozen of theſe *French* Men, for they were entered as ſuch. Now if a Subject of *England* to join with the King's Enemies, in purſuit of a deſign to burn or take any of the King's, or his Subjects Ships; that is, an adherance to the King's Enemies. But it appears, not only that Captain *Vaughan* was in their Company, but that he was their Commander; which Commanding the Veſſel on Board, which were *French* Subjects Enemies of the King and the Kingdom of *England*, is High-Treaſon, and the particular Fact of Treaſon for which he is Indicted. And it appears that he had a Commiſſion from the *French* King to command this Veſſel, the *Loyal Clencarty*.

Now the Priſoner having this Commiſſion to be Commander of this Veſſel, though they who ſerved under him were not Native *French* Men but other Foreigners, yet their ſubjecting themſelves to him, acting by Virtue or Colour of that Commiſſion, makes them to be the *French* King's Subjects, during their continuance in that Service; for otherwiſe all Prizes, which they ſhould take, would make them to be Pirates; which none will pretend to maintain, when they acted by a Commiſſion from a Sovereign Prince, that was an Enemy. And if they ſhall cruize upon our Coaſts with a deſign to take, or deſtroy any of the King's, or his Subjects Ships, they are Enemies, though they were the Subjects of a Prince, or State in Amity with the King of *England*. But at this time there is no neceſſity of entring upon this Queſtion, becauſe it is proved that diverſe, who were on Board this Veſſel were *French* Men, the joyning with whom, in Proſecution of ſuch a Deſign, is that kind of High-Treaſon of adhering to the King's Enemies. So that if Captain *Vaughan* was a Subject of *England*, he is proved Guilty of High-Treaſon, if you believe the Evidence.

But now it is inſiſted on by Mr. *Vaughan* and his Council, That though he was exerciſing Hoſtility againſt the King of *England*, and deſigning Miſchief to his Subjects; yet, ſays he, I was not a Subject of *England*, I was born a Sub-

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ject to the *French* King. If that be true, then is he not Guilty of High-Treason; he is an Enemy, but not a Traytor: And that is the Point you are now to consider of, Whether he be a Subject of *England*, or *France*?

Now as to that, he being taken under such Circumstances, and speaking *English*, it is reasonable to be presumed that he is a Subject of *England*, unless he proves the contrary. But then you have heard by several of the Witnesses, That when he was at first taken, he acknowledged himself to be an *Irish* Man; and he did not only acknowledge it to them that assisted in apprehending him, but being carried to *Dover*, when the Marshal entered him in his Book as a Prisoner, he entered him not as a *French* Man, but declared at that time he was an *Irish* Man. It may be he did not consider the Consequence of it, for the next Day he was carried before the Mayor of *Dover*, and then having considered better of it, that it was not for his Interest to acknowledge himself an *Irish* Man, he said he was born a Subject to the *French* King, and at *Martinico*. There were *Scotch* Men and *Irish* Men taken at the the same time, and they were entered as of the Nation they belonged to, and so were diverse entered as *French* Men. So that unless he hath given sufficient Evidence to the contrary, this is sufficient to induce you to belive him an *Irish* Man born.

But he has endeavoured to take off this Evidence that has been given. First, he says, It was when he was in Drink that he did confess himself to be an *Irish* Man; but when he was Sober, he said he was a *French* Man. And besides that he calls a Witness, whose Name is *Robert French*, to give an account of him. And *French* says, That about fourteen Years ago he was at St. *Christophers*, on *French* Ground, and he did then see this *Thomas Vaughan*, he did take him then to be about the Age of fifteen. He says he stay'd there about four and twenty Hours, and that he was in the Company of this *Vaughan* and his Father about five or six Hours. He says his Father told him at that time, that this young Man, who was then about fifteen Years of Age, was born at *Martinico*. He says further, That his Father did recommend this Son to him to be a Sea-faring Man, being the Imployment he intended him for; and he is sure this is the Man. This *Robert French* was ask'd, Whether he ever saw this *Vaughan* from the time he first saw him at St. *Christophers* until this time? He says he never saw him since that time, till about two Months ago. He gives you this account how he came to meet with him; he says he came to Town, and being a Charitable man, he used to visit the Prisons; and he came to *Newgate* to one *Knowler*, and there he saw Captain *Vaughan*; and though he had not seen him for fourteen Years before, yet he knew him again, and is positive that he is the same Person.

Another Swears he knew the Prisoner about five years, and he was reputed a French man.

There has been another Witness produced which is that *Daseine*, who came up as a French man, and talked French, pretending he could not speak English; but on Examination it was discovered that he had an Imployment in *England*, and was a Bayliffs-Follower, and it appears he can speak English very well; and notwithstanding his pretence has given his Evidence in English. And he tells you, That he about the year 1669 did go to St. *Christophers*, and afterwards to *Martinico*, and there he went to one *Williams*, who had a Friend whose name was *Vaughan*, at whose House there was a Christning to be of his Son, to whom *Williams* was to be Godfather; and this Witness was carried thither, and the Child was Christned *Thomas*. He tells you he went over again to St. *Christophers*, and to *Martinico* in the year 1677, and that then he enquired for this Child, and did see him. Then he says, after that, he went over again to St. *Christophers* and to *Martinico* about thirteen years ago, and then saw him again, and, I think, never saw him since until very lately; and this Prisoner he undertakes to tell you is the very Person.

But

But then one *Harvey* tells you he ſaw him in *France* in the year 1693, and there he was taken to be a French man, and he lived with a Woman that ſold Silk that ſaid he was her Nephew, her Siſter's Son, and that he was born at *Martinico*. This is the Evidence he gives you to induce you to believe he is a French man.

Now in the firſt place, before I open the Evidence in anſwer to it, I deſire you to obſerve the Weight and Import of this Evidence that hath been produced by the Priſoner. Firſt, for this *French* that ſays he ſaw Captain *Vaughan* fourteen years ago, when he was about fifteen years of Age; he had no former Acquaintance with him, ſtayed in his Company but ſix Hours, and came away within four and twenty Hours after his firſt arrival, and never ſaw him again in fourteen years; it is a ſtrange thing that he ſhould know him again ſo well as to be ſo poſitive that he is the ſame Perſon, for in fourteen years there is a great alteration in a man: For a man that has known one at the Age of fifteen, and not ſeen him in fourten years after, though before he was very well acquainted with him, cannot ſo eaſily know him again. But however he is poſitive, upon his Oath, that he is the ſame Perſon that he ſaw at *Martinico*.

Then as for *Daſcine*, you may conſider him that he ſhould take notice of a little Child that he ſaw Chriſtned ſeveral years before, and that he ſhould now remember him when he had not ſeen him in thirteen years; ſure he had a great liking to this Child, that when he went to *Martinico* many years after he ſhould be ſo inquiſitive after him; I muſt leave theſe things to you to conſider of: That he might have an Aunt in *France* that is very poſſible too.

But now conſider how this Evidence hath been endeavoured to be anſwered; two Witneſſes have been produced to contradict that which they have Sworn. The firſt is *David Cray*, who tells you he has known the Priſoner for two years, and ſays he was always reputed to be an *Iriſh* man, and born in *Galloway*; he has often diſcourſed with him about his Country, and he told him that he was an *Iriſh* man, and born at *Galloway*. Then you hear what a Letter is produced writ to *Cray* when he was to come upon his Tryal, he mentions what his Defence was, and that it was impoſſible that any could do him any harm but he and two more. *Cray* Swears it is his Hand; that he hath ſeen him write, and he belives it is his Hand.

Then there is a Gentleman, Mr. *River*, that came here by chance, who is a *Galloway* man, he ſaith he knew the Priſoner's Father, who was reputed to come thither about the time of the Rebellion in *Ireland*, in 1641. and lived at *Galloway*, and that this Priſoner, Mr. *Vaughan*, was his Son, and he knew him of a Child, was well acquainted with him, lived hard by him, remembers him an Apprentice in *Galloway*, and tells you to whom, and ſays he is ſure this is the very man; and that he ſaw the Priſoner in 1691, about the time of the Reduction of *Galloway*; and he is confident that the Priſoner is the Son of *John Vaughan* at *Galloway*, and he gives you a particular account of him and his Family; *viz.* of the Reputation and Manner of living of his Father, and what other Brothers he had; ſo that there is no Objection againſt his Credit, and it is hard to believe, ſince he is ſo poſitive and circumſtantial, that he can be miſtaken.

But the Priſoner and his Council have endeavoured to anſwer all this Evidence; and firſt they have called *Cray*'s Brother to prove that he is an ill man, for that he came into this Town where his Brother lives, who ſubſiſted him and took him to his Houſe, and one day when he and his Wife went abroad, he made bold with ſome of his Money; but they thought the Maid had it, and he charged her with it, but to his Satisfaction it did afterwards appear that *David* had it.

Then

Then there is another, *Chriſtopher Hyden*, *Chriſtopher Cray's* Servant, who ſays he, heard *D. Cray* ſay he was forc'd to be an Evidence againſt *Vaughan* to ſave himſelf; and that he uſed to threaten his Brother, that if he would not give him more Money he would ſwear againſt him. *Bryan* ſaith much to the ſame purpoſe. Theſe are produced to take off the Credit of *D. Cray's* Teſtimony.

But then Gentlemen, as to the place of the Priſoner's birth, two other Witneſſes are produc'd to give you Satisfaction that this Capt. *Vaughan* was not the Son of that Mr. *Vaughan* of *Galloway*, whoſe Evidence I will open to you, and then you will ſee how coherent they are in their Teſtimony. The firſt is *Creighton*, a *Shoemaker*, he ſays he knew *Thomas Vaughan*, the Son of *John Vaughan* of *Galloway*, about ten years ſince; he was a *Galloway* man bred, and lived the next door to *John Vaughan* that had a Son *Thomas*. He ſays he has been here about ten years in *England*. He ſays he thinks that *Thomas Vaughan*, the Son of *John Vaughan*, was about the Age of fifteen years, but that this Priſoner is not he, for that *Thomas Vaughan* was diſfigured with the Small-pox; he remembred him well, he had reaſon for it, for he once baſted him ſoundly, and that he went away from *Galloway* when he was about fifteen years of Age, and was reported to be dead; and if it were ſo this Priſoner cannot be the Perſon.

The other Witneſs is as poſitive as *Creighton*, for he ſaith, He knew this *John Vaughan* of *Galloway*, and his Son *Thomas*; and that *Thomas Vaughan*, Son of *John Vaughan*, died about ten years ſince of the Small-pox. So that they have found two *Thomas Vaughans*; one tells you of one that was fifteen years old, and was diſfigured with the Small-pox; and the other tells you of *Thomas Vaughan*, who died of the Small-pox when he was ten years of Age.

You are therefore to conſider the Evidence on both ſides. The Queſtion principally is, Whether the Priſoner be a Subject of the King of *England*? If you are ſatisfied that he is not an Engliſh Subject, but a French man, then he is not Guilty of this High-Treaſon; but if you are ſatisfied, by the ſeries of the whole Evidence, that he is an Iriſh man, and that he had a Commiſſion from the French King, and that he cruized upon our Engliſh Coaſts, in Company with the King's Enemies, with a deſign to take, burn, or deſtroy any of the King's or his Subjects Ships, you are to find him Guilty of High-Treaſon whereof he ſtands Indicted, otherwiſe you are to acquit him.

Cl. of Arr. Swear an Officer to keep the Jury; which was done.

After a ſhort ſtay, the Jury returned into Court, and gave in their Verdict.

Cl. of Arr. Gentlemen, anſwer to your Names. *E. Leeds.*

Mr. Leeds. Here.

Cryer. *Vous avez*, and ſo of the reſt.

Cl. of Arr. Gentlemen, Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of Arr. *Thomas Vaughan*, hold up thy Hand. (Which he did.) Look upon the Priſoner. How ſay you, Is he Guilty of the High-Treaſon whereof he ſtands Indicted, or not Guilty?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels, Lands or Tenements had he at the time of the Treaſon committed.

Foreman. None to our knowledge.

Cl. of Arr. Then hearken to your Verdict as the Court hath Recorded it: You ſay that *Thomas Vaughan* is Guilty of the High-Treaſon whereof he ſtands

Indicted, but that he had no Goods or Chattels, Lands or Tenements at the time of the High-Treason committed, or at any time since to your knowledge, and so you say all.

Jury. Yes.

Tho. Vaughan. My Lord, let me beg one Favour, that I may be used like a Gentleman, that I may be sent to a Chamber, and not to a Dungeon, and that my Friends may come to me.

L. C. J. Holt. *Captain Vaughan*, they say you once made an escape, and therefore the Keeper must keep you with Humanity, but with all Security.

Tho. Vaughan. I desire that I may be kept like a Christian.

L. C. J. Holt. The Keeper must do his Duty.

Cl. of Arr. *Thomas Vaughan*, hold up thy Hand, (which he did) Thou standest Convicted of High-Treason against our Sovereign Lord the King: What hast thou to say for thy self why Judgment should not pass against thee to dye according to the Law?

Tho. Vaughan. I am altogether a Stranger to the Law, my Lord, I refer my self to my Council.

L. C. J. Holt. Well, then you refer your self to your Council. You have had a fair Tryal, and have no reason to complain of it: If your Council have any thing to say in arrest of Judgment they shall be heard.

Mr. Phipps. My Lord, the Indictment has two sorts of Treason laid in it; the one for adhering to the King's Enemies, the other levying of War; and, with submission, I take it that the first is not well laid, for it says that the Prisoner did adhere to the King's Enemies, but says not against the King. Now every body knows that the French King is in War, not only with *England* but *Holland*, and *Spain*, and the Emperour: But if a Man joyn with the French against any of them, he adheres to the King's Enemies, and yet it cannot be said to be against the King; therefore they ought to have laid it that he did adhere to the King's Enemies *contra Dominum Regem*; it must be aiding and comforting them against the King that makes the Treason.

L. C. J. Holt. It does say so.

Mr. Phipps. No, my Lord, it only says that Captain *Vaughan* did adhere to the King's Enemies, and does not say it was against the King; and if that be Treason, is what we desire to know.

L. C. J. Holt. If he adhere to the King's Enemies, it must be against the King, though he assist them only against the *King's* Allies, for thereby the King's Enemies may be more encouraged and enabled to do Mischief or Damage to the King: Suppose you assist the *French King* against the *King* of *Spain*, that is now in Allyance and League with the *King* of *England*, and the *French* in actual Enmity, that is to adhere to the *King's* Enemies against the *King*.

Mr. Phipps. Would that be Treason my Lord?

L. C. J. Holt. Yes certainly, though that is not a point in this Case, and so not necessary to be determined now; for the Act of Parliament of 25 of *E.* 3. defines Treason in adhering to the King's Enemies, and expresses the Overt-Act in giving them aid or comfort; it is sufficient to alledge the Treason in the Words of the Statute, adhering to the *King's* Enemies. An Overt-Act alledged, shews it to be against the *King*; and in pursuance of that adherence he did so and so; he was a Captain and Soldier in the Ship, did join with the *King's* Enemies, &c. with a design to destroy the *King's* and his *Subjects* Ships; surely that is most manifest an adherence to the *King's* Enemies against the *King*.

Mr. Phipps. The Overt-Act, if it were alledged sufficiently, would not help it; for if there can be an adhering to the *King's* Enemies that is not Treason, they

they ought to alledge ſuch adhering as is Treaſon; and if the Treaſon it ſelf is not well alledged, the Overt-Act will not help it.

L. C. J. Holt. There is an Overt-Act to ſhew it to be againſt the *King*. It is ſaid all along, he being in this Veſſel *Clencarty, cum diverſis Subditis*.

Mr. Phipps. But then that Overt-Act is not well alledged, for 'tis ſaid only he went a cruizing; whereas they ought to have alledged that he did commit ſome Acts of Hoſtility, and attempted to take ſome of the *King's* Ships; for cruizing alone cannot be an Overt-Act, for he might be cruizing to ſecure the *French* Merchant Ships from being taken, or for many other purpoſes, which will not be an Over-Act of Treaſon.

L. C. J. Holt. I beg your Pardon. Suppoſe the *French King*, with Forces, ſhould come to *Dunkirk* with a deſign to invade *England*, if any one ſhould ſend him Victuals, or give him Intelligence, or by any other way contribute to their Aſſiſtance, it would be High-Treaſon in adhering to the *King's* Enemies.

Mr. Phipps. If the *French King* had deſigned an Invaſion upon *England*, and Captain *Vaughan* had aſſiſted in his Veſſel in forwarding the Invaſion, it would have been Treaſon; but here is nothing mentioned but cruizing.

L. C. J. Holt. Cruizing about the Coaſt of *England* with a deſign to deſtroy the *King's* Ship.

Mr. Phipps. That deſign ought to be made appear by ſome Act of Hoſtility, for in the Caſe of *Burton* and *Bradſhaw*, and others, which my Lord *Coke* cites, the agreeing to riſe and pull down Incloſures, and meeting and providing Arms for that purpoſe, is agreed not to be levying of War; and they were indicted for Conſpiring to levy War upon the Statute of Queen *Eliz.* And in this Caſe, here being only a Conſpiring, and nothing attempted, it can be no more Treaſon than it was in that Caſe.

L. C. J. Holt. When Men form themſelves into a Body, and march Rank and File with Weapons offenſive and defenſive, this is levying of War with open Force, if the deſign be Publick. Do you think when a Ship is armed with Guns, *&c.* doth appear on the Coaſt, watching an opportunity to burn the *King's* Ships in the Harbour, and their deſign be known, and one goes to them, and aids and aſſiſts them; That this is not an adhering to the *King's* Enemies? Here are two Indictments, one for levying War, and the other for adhering to the *King's* Enemies; but the adhering to the *King's* Enemies is principally inſiſted on, and there muſt be an actual War proved upon the Perſon indicted in the one, yet need not be proved in the other Caſe.

Mr. Phipps. The ſame certainly is neceſſary in one as well as the other; for barely adhering to the *King's* Enemies is not Treaſon, but there muſt be an actual Aiding and Comforting them; and a meer intention to aſſiſt the *King's* Enemies, is not an adherence within the Statute of *25 Ed. 3.*

L. C. J. Holt. If there be not High-Treaſon in the Act alledged, that is, if it do not make out an adherence to the *King's* Enemies, than your Objection would hold good.

Mr. Phipps. The going to cruize, my Lord, does not make out an adherence to the *King's* Enemies; for his cruizing may be for other purpoſes as well as to take the King's Ships, and your Lordſhip will intend the beſt in favour of Life.

Mr. Whitaker. To burn the King's Ships.

L. C. J. Treby. The Indictment is laid for Adhering to, and Comforting and Aiding the King's Enemies. You would take that to be capable to be conſtrued adhereing to the *King's* Enemies in *other* reſpects; but I take it to be a reaſonable Conſtruction of the Indictment, to be adhering to the *King's* Enemies in their *Enmity*. What is the Duty of every Subject? It is to fight with,

and

and ſubdue, and weaken the *King's* Enemies: And contrary to this, if he Confederate with, and Strengthen the *King's* Enemies, he expreſly contradicts this Duty of his Allegiance, and is Guilty of this Treaſon of adhering to them. But then you ſay here is no aiding, unleſs there were ſomething done, ſome Act of Hoſtility. Now here is going a Board with an intention to do ſuch Acts; And is not that Comforting and Aiding? Certainly it is: Is not the *French King* comforted and aided, when he has got ſo many *Engliſh Subjects* to go a cruizing upon our Ships? Suppoſe they Man his whole Fleet, or a conſiderable part of it; Is not that aiding? If they go and enter themſelves into a Regiment, Liſt themſelves and March, though they do not come to a Battel, this is helping and encouraging; ſuch things give the Enemy Heart and Courage to go on with the War; or elſe, it may be, the *French King* would come to good Terms of Peace. It is certainly Aiding and Comforting of them, to go and accept a Commiſſion, and enter into their Ships of War, and Liſt themſelves, and go out in order to deſtroy their Fellow-Subjects, and ruine the *King's* Ships; theſe are Actings of an Hoſtile nature. And if this be not *adhering*, &c. it may as well be ſaid, That if the ſame Perſons had made an attack upon our Ships and miſcarried in it, that had not been ſo neither, becauſe that in an unproſperous attempt there is nothing *done* that gives aid or comfort to the Enemy. And after this kind of Reaſoning they will not be Guilty, till they have Succeſs; and if they have Succeſs enough, it will be too late to queſtion them.

Mr. Phipps. Intending to levy War is not Treaſon, unleſs a War be actually levied.

L. C. J. Treby. Is it not actual levying of War, if they actually provide Arms, and levy Men, and in a Warlike manner ſet out and cruize, and come with a deſign to deſtroy our Ships?

Mr. Phipps. It would not be an actual levying of War, unleſs they commit ſome Act of Hoſtility.

L. C. J. Holt. Yes, indeed, the going on Board, and being in a poſture to attack the King's Ships. As to the fault you find with the Indictment, there is a fault, but not in point of Law; they might have laid it more generally, ſo as to have given more Evidence.

Mr. Bar. Powis. However it is well enough.

But for you to ſay, becauſe they did not actually fight, it is not a levying of War; Is it not plain what they did intend? That they came with that intention, that they came in that Poſture, that they came Armed, and had Guns, and Blunderbuſſes, and ſurrounded the Ship twice, they came with an armed Force; that is a ſtrong Evidence of the deſign.

L. C. J. Holt. You would make no Act to be aiding and aſſiſting but fighting.

Mr. Phipps. Then next I am in your Lordſhips Judgment, whether the Statute of 28 of *Hen.* the 8*th.* by which Captain *Vaughan* is tried, is in force, and be not repealed by the firſt and ſecond of *Philip* and *Mary*, which ſaith, that all Tryals, in Caſes of Treaſon, ſhall be at the Common-Law. Now by the Common-Law before the Statute 28 *Hen.* 8. Treaſon done upon the Sea, was tried before the Admiral, or his Lieutenant, and my Lord *Coke* in the 12 *Rep.* in the Caſe of the Admiralty, ſaith the Juriſdiction of the Admiralty is by the Common-Law. By the Statute 33 *Hen.* 8. Treaſon confeſſed before three of the Privy-Council might be tried in a foreign County, but that Statute is repealed by the Statute 1 and 2 of *Philip* and *Mary*; for by the Statute 33 *Hen.* 8. *c.* 4. Treaſon committed *in trales*, might be tried in what County the King would aſſign; but ſince the Statute of *Philip* and *Mary*, it muſt be in the proper County; ſo that we are in your Lordſhip's Judgment, whether the Statute of

28 *Hen.*

28 *Hen.* 8. be in force; and whether, ſince the Statute of 1 and 2 *Philip* and *Mary*, Treaſons done upon the Sea, ought not to be tried before the Admirals, or anciently at the Common-Law?

L. C. J. Holt. This is Treaſon by the Common Law, and the Trial is by the Method of the Common Law.

Mr. Phipps. 'Tis true that my Lord *Coke*, and other Authorities ſay, That the Statute 35 *Hen.* 8. for trying Treaſons committed beyond Sea, is not repealed by the Statute of 1 and 2 *Philip* and *Mary*, but they do not ſay that this Statute is not repealed by the Statute of *Philip* and *Mary*; and the Books being ſilent in this, is the reaſon why I propoſe this Queſtion for your Lordſhip's Judgment.

L. C. J. Holt. It is no more a Queſtion than the Tryals of foreign Treaſon, and then the Determination of the Tryals upon the 35*th.* determines the Queſtion upon this.

Dr. Oldys. We muſt have two Witneſſes by the Rules of the Civil-Law, an extrajudicial ſaying of a Party may be retracted by them at any time, that is the Civil-Law, and ſo there can be but one Witneſs.

L. C. J. Holt. That is not the Law of *England.*

Dr. Oldys. I do humbly conceive that the Civil-Law is not taken away in this Caſe; for though the Statute preſcribes the form of Proceedings according to the Rules of the Common-Law, yet as to the Crimes and Proofs the Civil-Law is ſtill in force, and then the Party may retract his Confeſſion in Judgment, much more any extrajudicial ſaying.

Mr. Whitaker. You are arraigning the Verdict.

L. C. J. Holt. That you ſhould have taken notice of before the Verdict was given. But we think there is no danger in hearing this Objection, becauſe it is ſo eaſily anſwered. How many Witneſſes were to the Confeſſion?

Sir Ch. Hedges. We are not in a Court that proceeds according to the ſtrict Rules of the Civil-Law; but if we were, that Law is not ſo abſurd as to allow that a Party may retract his Confeſſion at any time, ſo as to make it have no effect.

Dr. Oldys. There muſt be two Witneſſes at any time.

Sir Ch. Hedges. So there are here to the Confeſſion; but you miſtake if you think that every particular is to be proved ſtrictly as the Civil Law requires, for the end of the Statute which directs the Proceedings of this Court was to facilitate the Method of making Proofs, that being found difficult by the courſe of the Civil-Law; and therefore was that Statute made, as plainly appears, by the Preamble thereof.

Dr. Oldys. There is a new Statute that revives that Statute again, and that requires two Witneſſes; whereby 'tis reduced to the Rules of the Civil-Law again.

L. C. J. Holt. Two Witneſſes there muſt be; but then conſider it is not neceſſary to have two to every individual Overt-Act: For ſuppoſe there be two Overt-Acts laid in the Indictments, for one ſpecies of Treaſon, Compaſſing and Imagining the Death of the *King*; if there be one Witneſs that he bought a Dagger, and ſaid he would kill the *King*, and he is ſeen, it may be, going to the *King's* Bedchamber with the Dagger; another Witneſs ſays, he heard he would kill the *King* with a Piſtol, and bought a Piſtol, and he ſtood waiting to kill the *King* as he came by; that is another Overt-Act of the ſame Treaſon. If one Witneſs prove one, and another Witneſs prove the other, this is ſufficient Proof with us.

Dr. Oldys. It is another Queſtion, Whether he be a Subject?

L. C. J. Holt. That is not an Overt-Act; if there be one Witneſs to that, it is enough, there needs not two Witneſſes to prove him a Subject; but upon the Tryal there were above two Witneſſes to prove it: There was *Crittenden*, the Marſhal of *Dover*, *Cray* and *Rivet*. I muſt tell you, as to the Doctrine of the Civil-Law, it is not univerſally received in all Countries; it is received in ſeveral Countries as they find it Convenient, and not as Obligatory in it ſelf.

Dr. Oldys. Yes, in all places, as to Proof; for 'tis the Law of God and Nations, *Ex ore duorum, vel trium*, &c. And one Witneſs is no Witneſs.

Sir Ch. Hedges. Two Witneſſes may be neceſſary to convict a Man of any capital Crime, but then it doth not follow that there muſt be two Witneſſes to prove every particular Fact and Circumſtance. In this point, touching the Place of the Nativity of *Thomas Vaughan*, Was there not ſufficient in his own Confeſſion, together with the other Proofs on the King's behalf, to throw the burden of Proof upon the Priſoner? You your ſelves ſeem to have been of that Opinion; you undertook to prove it, and 'tis you that have failed in that particular.

L. C. J. Holt. Our Tryals by Juries are of ſuch Conſideration in our Law, that we allow their Determination to be the beſt, and moſt advantagious to the Subject, and therefore leſs Evidence is required than by the Civil-Law. So ſaid *Forteſcue* in his Commendation of the Laws of *England*.

Dr. Oldys. Becauſe the Jury are the Witneſſes in reality, according to the Laws of *England*, being preſumed to be *ex vicineto*; but when it is on the High and Open Seas, they are not then preſumed to be *ex vicineto*, and ſo muſt be inſtructed according to the Rules of the Civil-Law by Witneſſes.

Mr. Bar. Powis. This is not a Tryal by the Civil-Law; for that Statute was made to avoid the Niceties of your Law.

Mr. J. Eyers. He is tryed with like Evidence, as in other Caſes of High-Treaſon.

Dr. Oldys. No, the late Act requires two Witneſſes.

Cl. of Arr. Make Proclamation of ſilence.

Cryer. All manner of Perſons are Commanded to keep ſilence, while Judgment is giving, upon pain of Impriſonment.

And then Judgment was given, according as the Law directs in Caſes of High-Treaſon

An Abstract of the Tryal of John Murphey *for High-Treason, &c.*

John Murphey *being Indicted for High-Treason, the Twelve Gentlemen following were sworn upon the Jury for his Tryal.*

Nathaniel Long	*John Morewood*
John Eure	*Nicholas Greenway*
John Child	*Samuel Jackson*
Thomas Clarke	*John Hall*
Thomas Batem. n	*John Collumn.*
Henry Trye	*Roger Morr.*

Then Mr. Whitaker, *one of the King's Councel, opened the Indictment; after which Dr.* Nuton, *one of the King's Advocates, spoke as follows.*

John Murphey of *Cork*, in the Kingdom of *Ireland*, born a Subject of this Kingdom, and therefore owing Allegiance and Service to his King and Country, ſtands Indicted for Adhering to, Aiding and Comforting His Majeſties Enemies; and likewiſe for levying of War, in Aſſiſting the *French* King, the Greateſt, the moſt Inveterate, and the moſt Dangerous Enemy of our King, our Nation, our Religion, and the common Liberty of *Europe*, in an Unjuſt, Cruel, and long War, againſt his King and Country; that King who Heads the League againſt the common Oppreſſor of Chriſtendom, and the Country whoſe Forces and Reputation ſupport that League; and this with a deſign only to rob and ſpoil, which is the Meaneſt part of the War, but withal the moſt Miſchievous to the Innocent and Trading Subjects; being on Board a *French* Privateer, called, *The Noſtre Dame de bon Novelle*, and Fighting in her; for though the coming with ſuch a deſign, and the being in a Veſſel, under a *French* Commiſſion, was Criminal, and muſt have met with, ſince it deſerved the ſame Puniſhment; yet this was put in Execution too,

too, by the the Taking the *Joseph* and *Isaac* of *London*, on the Twentieth of *March* last, to the Terrour and the Impoverishment of many of his Fellow-Subjects; which justifies their Complaint, and this publick Prosecution of the State, for the bringing him to Justice.

And then the Witnesses for the King were called, and being Examined, together with several others, on the behalf of the Prisoner, it appeared to the Jury that the said *Murphey*, being an *Irish* Man, and his Majesties Subject, did Traiterously adhere unto, and assist the *French* King in a *French* Ship, called, *The Notre Dame de bon Novelle*, and in Taking and Securing therewith a Ship, called, The *Joseph* and *Isaac* of *London*, belonging to *English* Subjects. And thereupon he was found Guilty, and received Sentence of Death, as in Cases of High-Treason.

THE

COMMISSION

OF

Capt. Tho. Vaughan,

Which he had by Order of the

FRENCH KING.

LEWIS ALEXANDER of *Bourbon*, Earl of *Toulouſe*, Duke of *Amville*, Commander of the King's Orders, Governor and Lieutenant-General for His Majeſty in the Province of *Britany*, Peer and Admiral of *France*. To all thoſe who ſhall ſee theſe preſent Letters Greeting; The King having Declared War againſt His Catholick Majeſty, the Favourers of the of the Crowns of *England* and *Scotland*, and the *Eſtates of the United Provinces*, for the Reaſons contained in the Declarations Publiſhed by His Majeſty throughout the Extent of His Kingdom, Countries, Lands and Lordſhips under His Obedience; and His Majeſty having Commanded Us to take care that the ſaid Declarations be obſerved, in what doth depend upon the Power and Authority which His Majeſty hath been pleaſed to commit to Our ſaid Charge of Admiral. We have according to the expreſs Orders of His ſaid Majeſty, given Leave, Power and Permiſſion to *THOMAS VAUGHAN*, living at *Bulloigne*, to arm and ſet forth in Warlike Manner a Bark, called, *The Loyal Clencarty* of the Burthen of Ten Tuns, or thereabouts, which is at preſent in the Port

of *Bulloigne*, with ſuch Number of Men, Cannons, Bullets, Powder, Shot, and other Ammunitions of War, and Proviſions which are Neceſſary to ſet her out to Sea, in a Condition to ſail and cruize upon the Pirates, and others without Commiſſion, as alſo upon the Subjects of His Catholick Majeſty, the *Eſtates of the United Provinces*, the Favourers of the of the Crowns of *England* and *Scotland*, and other Enemies of this Eſtate, in what Places ſoever he can meet them, whether it be upon the Coaſts of their Country, in their Ports, or Rivers, alſo upon their Shores, or Places where the ſaid Captain *THOMAS VAUGHAN* ſhall think fit to land to annoy the ſaid Enemies; and there to make uſe of all the Means and Arts permitted, and uſed by the Laws of War, to take them and bring them Priſoners with their Ships, Arms, and other Things in their Poſſeſſion.

Provided the ſaid *VAUGHAN* ſhall keep, and cauſe thoſe of his Crew to keep the Maritime Orders, and that he ſhall carry, during his Voyage, the Flag and Enſign of the King's Arms and of Ours, and cauſe the preſent Commiſſion to be Regiſtred in the Regiſtry of the neareſt Admiralty where he ſhall be Equipped, and leave there a Roll Signed and Certified by him, containing the Names and Surnames, the Births and Reſidence of his Crew; and make his return to the ſaid Place, or ſome other Port of *France*, and make his Report before the Officers of the Admiralty, and no others, of what ſhall have happened during his Voyage, and give Us Advice thereof, and ſend his ſaid Report to the Secretary-General of the Marine, with the Papers juſtifying the ſame, that We may give ſuch Orders thereupon as may be Neceſſary.

And We pray and require all Kings, Princes, Potentates, Sovereigns, Eſtates, Republicks, Friends and Allies of this Crown, and all others, to whom it ſhall appertain, to give the ſaid *VAUGHAN* all favour, aid, aſſiſtance and ſuccour in their Ports, with his ſaid Veſſel, Company and Prizes, which he ſhall take during his Voyage, without doing, or ſuffering to be done to him any Trouble or Hindrance; offering to do the like when We ſhall be by them thereunto required.

And We do command and require all Marine Officers, and others, to whom it ſhall appertain, to let him ſafely and freely paſs with his ſaid Veſſel, Arms and Company, and the Prizes which he ſhall take, without doing, or ſuffering to be done to him any Trouble or Hindrance; but on the contrary, to give

him

him all ſuccour and aſſiſtance that ſhall be Neceſſary. Theſe Preſents to be of no force after one Year, from the Day of the date hereof.

In Witneſs whereof We have Signed theſe Preſents, and cauſed them to be Sealed with the Seal of Our Arms, and Counter-ſigned by the Secretary-General of the Marine, at *Verſailles* the tenth Day of the Month of *July*, One thouſand ſix hundred ninety five.

L. A. de Bourbon.

L. S.

By my Lord De Vallencour.

The preſent Commiſſion was Regiſtred in the Regiſtry of the Admiralty of Bulloigne, *after having been ſeen by us* James Abot de la Cocherine, *the King's Councellor, deputed to the Intendancy of* Bulloigne, *Exerciſing the Charge of Lieutenant-General of the Admiralty, in the preſence of the King's Proctor, at the requeſt of the ſaid Captain* Vaughan, *being preſent, whom we have permitted to ſail and cruize upon the Enemies of the Eſtate. Done at* Bulloigne *the fourteenth of* July, *One thouſand ſix hundred ninety five.*

Maginon.

Verſionem hanc Anglicanam in omnibus, cum ſuo Originali Gallico convenire teſtor,

Wilihelmus Rocke, Notar. Publ.

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